



Victorian Equal Opportunity
& Human Rights Commission

Held back

> The experiences of students with disabilities in Victorian schools





Victorian Equal Opportunity & Human Rights Commission

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Held back: The experiences of students with disabilities in Victorian schools.

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The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body that has functions under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001* and the *Charter of Human Rights and Responsibilities Act 2006*. Our functions include resolving disputes, providing education about human rights and equality of opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission reports to the Attorney-General on the operation of the Charter and, at the request of public authorities, conducts compliance reviews.

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Held Back

> The experiences of students with disabilities in Victorian schools

Victorian Equal Opportunity and Human Rights Commission

September 2012

Foreword

In Victoria today more than 100,000 students in Victorian schools have a disability that may affect their learning ability. These students have a wide range of disabilities – they may be blind or deaf, have a physical disability that requires them to use a wheelchair or other aides, a learning disability that affects their ability to process verbal or written information, or a disability that affects their behaviour and the way they learn. The complexity of the modern school classroom, and the demands on today's educators, is reflected in the diversity of needs of these students.

Each of these students has the right to the best possible education we as a society can provide. We have committed to providing all children with an education because we understand that it is an essential foundation to economic and social wellbeing later in life. We all expect that when we send our children to school they will be given the best opportunity to learn.

The Commission undertook this research project in response to concerns expressed to us by parents, advocates and community members that for students with disabilities accessing a good education and achieving good learning outcomes was a lottery rather than a certainty.

To better understand what was happening for these children, we sought feedback through surveys, 'have a say days', case studies and submissions so we could give voice to those experiences – good and bad. More than 1,800 people participated in the project – small when you compare it with the number of students enrolled in Victorian schools – but a big enough number to demonstrate the interest and passion this topic can generate.

Parents and teachers told us of the commitment they bring to ensuring students gain access to the best possible educational opportunities. But they also told us of the attitudes that held children back. These include, inflexible policies which they feel deny students the opportunity to achieve, persistent experiences of bullying, the difference a committed school principal can make, and the lack of appropriate training for teachers, both at university and after qualifying, to make sure they could provide the best possible support to students.

Parents told us of the personal strain and distress and of constant negotiation to make sure their child was not left behind. Some gave up jobs, moved suburbs, or spent many hours a day travelling to make sure their child was at a school they felt could offer the best learning environment.

Some parents used the project to voice concerns they felt too afraid to raise with their school. Many told us they were reluctant to make formal complaints because for the few that did it was often a difficult path leading to legal arguments that didn't reflect their lived experience – there was no understanding and acknowledgement that their child did not have the educational outcomes they were capable of achieving.

The Commission worked with government and non-government education providers in preparing this report. We particularly acknowledge and thank the Department of Education and Early Childhood Development (DEECD) for its assistance with the preparation of this report. We thank Mark Tainsh, Director, Disabilities and Additional Needs who has spent many hours on meetings, emails and interviews providing information to ensure the accuracy and completeness of the report.

The Commission wants to thank the many parents, educators, students and advocates who took time to complete surveys, provide us with submissions and attend meetings to inform this research. We appreciate the report itself does not resolve the many issues they have raised with us but we hope they appreciate our genuine effort to provide a vehicle for their voices to be recognised and heard.

Thanks also to the Commission staff, led by Michelle Burrell, Manager Strategic Projects and Policy Unit, who have worked on the report for many months.

The Commission welcomes the initiatives announced by DEECD to enhance the learning experience of students with disabilities in Victorian government schools and its commitment to providing high quality learning and wellbeing outcomes for their students.

A recent report found that almost half of people with a disability in Australia live in or near poverty, with Australia ranking last in 27 developed countries for economic outcomes for people with a disability. Australians with a disability are half as likely to be employed as people without a disability. While many factors contribute to this terrible report card we know that education is absolutely essential to addressing this gap.

With funding models for students and schools under scrutiny and up for negotiation, the Commission hopes this report can contribute specifically to a better understanding of the issues and barriers facing students with disability.

As a community we need to make sure that the need for investment in education for students with a disability is understood and realised. Not just because they are entitled to the best possible education but also because we all benefit – at an individual, community and national level. If these young people are held back, we all are.



Karen Toohey

Acting Commissioner
Victorian Equal Opportunity
and Human Rights Commission

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Executive Summary

A good education matters. Through their experiences at school, children and young people learn about themselves and the world in which they live, as well as developing the skills and competencies to prepare for further study and work. A good education provides the foundation that supports children and young people to be active participants in their communities, find fulfilling work and live a decent life.

When students with disabilities are unable to enjoy a good education, their future is seriously compromised. A poor education is one of the key reasons why the economic and social participation rate of Australians with disabilities is so low.

People with disabilities are less likely to have completed Year 12 and are less likely to hold a post-school qualification.¹ They are also more likely to be unemployed and have significantly less income than others in the community.² Indeed, 45 per cent of Australians with disabilities live in, or near, poverty.

The Commission's research has sought to understand and report on the experiences of students with disabilities in Victorian schools, across government, Catholic and Independent schools and in both mainstream and specialist settings.

We collected quantitative and qualitative data through a detailed survey, 'have a say' day consultations and a statewide phone-in, involving 1,827 educators, students with disabilities and their parents. We also received 11 submissions from organisations supporting people with disabilities.

From our research, it was clear that many individual schools and many individual teachers are working successfully to build inclusive school communities, improving access to education for students with disabilities and supporting them to achieve positive educational outcomes. However, this good work is not consistent across Victoria.

The quality of education that a student with disability receives should not be determined by the particular school that he or she attends or the principal. Nor should it rely on the individual teacher in the classroom. The Victorian school system should be structured and funded to support access to education for students of all abilities, including students with a disability that affects their ability to participate and learn. If we do not cater for needs of these students, we are denying them a place in society.

Challenges at the system level – government schools

One of the key issues raised by parents and educators in the Commission's study is that the criteria for targeted funding from the Department of Education and Early Childhood Development (DEECD) under the Program for Students with Disabilities (PSD) means that not all students with disabilities protected under anti-discrimination legislation are eligible for this additional support.

In 2011, 20,883 students received PSD funding, which equates to around 3.9 per cent of the Victorian government school population.

However, our research indicates that there is a large number of students with disabilities who do not meet the criteria for PSD funding but who still require additional support and individualised teaching to maximise their educational outcomes.

1 Australian Bureau of Statistics, 'Education' *Disability, Australia, 2009* cat. no. 4446.0 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4446.0>>.

2 Ibid 'Labour force'.

While DEECD states that the needs of these students are to be addressed through the general school budget, and a range of other supports including the Language Support Program, student support services and the Abilities Based Learning and Education Support (ABLES) resource, this approach requires individual schools to accept these obligations and follow this policy. It also requires planning and funding based on a clear understanding of the total number of students with disabilities, the schools they attend and the supports they require.

The reality is that DEECD does not have the systems in place to collect this information. This in turn means that the appropriate planning cannot be undertaken to strengthen the system as a whole and to provide schools, teachers and students with the support they need. Similar challenges around data collection and service planning are also evident in the Catholic system and Independent schools sector.

Further, while DEECD has policies, guidelines and support in place for the government school system to meet the needs of students with disabilities, our study indicates that:

- it does not know if these work, as there appears to be no means to assess the results of these interventions/approaches or to measure the educational progress of students with disabilities
- it does not know if these interventions/ approaches are being implemented in all schools, as this data is not collected
- it does not know how schools are performing in relation to inclusion and non-discrimination, as there is no feedback mechanism to engage schools or parents at a system level.

Further, there is no means to reliably measure whether PSD funding when provided is delivering the best possible outcomes for students receiving the program's support.

DEECD has developed valuable guidance for schools, which under the scheme, are required to establish a student support group and prepare an individual learning plan for each PSD-funded student. However, our research has found that implementation of PSD requirements can vary from school to school and there is no system in place to ensure that these requirements are always met or that students with disabilities are making progress towards their educational goals.

The Commission welcomes the additional funding and activities that will be delivered in Victorian schools under the Australian Government's More Support for Students with Disabilities initiative. However, we recognise that this is a two-year program and that questions remain regarding the program's long-term sustainability.

Challenges at the school level

Under state and federal anti-discrimination laws, Victorian schools have a legal requirement to ensure that students with disabilities can participate in education on the same basis as other students. The Victorian *Equal Opportunity Act 2010* not only makes it unlawful to discriminate against a student based on their disability, it also creates a positive duty for schools to take reasonable steps to eliminate discrimination as much as possible. This means that all Victorian schools and staff must be proactive to prevent discrimination.

Victorian government schools also have specific obligations under the *Charter of Human Rights and Responsibilities Act 2006*.

In addition, the *Disability Standards for Education 2005* (the Standards) clarify the obligations under the federal *Disability Discrimination Act 1992* and provide guidance on five areas: enrolment; participation; curriculum development, accreditation and delivery; Student Support Services; and the elimination of harassment and victimisation. All schools are bound by the Standards.

Our study found that 40 per cent of educators were unaware of the Standards and how these translate into school and classroom practice. As a consequence, too many Victorian schools, both mainstream and specialist, are failing to provide the services and support that students with disabilities need for a decent education.

For example, more than half the parents we surveyed said that their child had not been able to fully participate at school because the necessary support, such as integration aides or a specialist service, was not available or because teachers lacked the time or capacity to adjust their classroom practice to accommodate the student.

The Commission is deeply concerned that, as a result, some students with disabilities may only attend school on a part-time basis and that some parents are using their financial resources to provide specialist supports in schools to address gaps in the system. Under the law and DEECD policy, neither situation should be allowed to happen.

During the course of our research, a number of parents and students also spoke about:

- being explicitly refused enrolment in a school or, more often, being subtly informed that the school would not be able to accommodate the student's needs
- being denied participation in external assessments, such as NAPLAN (National Assessment Program Literacy and Numeracy), or not receiving the necessary adjustments to participate fully in exams and assessments, especially the VCE (Victorian Certificate of Education)
- being denied equal access to attend excursions, school camps or other extracurricular activities
- student support group meetings taking place infrequently or haphazardly and individual learning plans not being developed in a timely fashion or to an acceptable standard
- poor planning and inadequate sharing of information when students with disabilities go through transition points in their education
- struggling to find regular, convenient and accessible transport to attend school
- discriminatory attitudes expressed by a small number of teachers.

Students with disabilities living in rural and regional Victoria experienced particular disadvantage in accessing the necessary support to participate fully at school, such as integration aides, occupational therapists, speech therapists and other specialists, given the limited availability of these professional services outside metropolitan Melbourne.

We also heard numerous examples of sustained bullying and harassment of students with disabilities. The problem appears to be widespread, with almost two-thirds of students and parents who responded to the survey reporting that they or their child had been bullied at school.

These experiences can profoundly shape a student's sense of self-worth and inclusion in their school community, as well as undermine their participation at school and their educational outcomes.

The risk of being bullied is even greater for students with disabilities from Indigenous or culturally and linguistically diverse (CALD) backgrounds. These students and their families also face additional barriers when it comes to communicating with schools and navigating the education system to identify and advocate for necessary supports and adjustments.

In addition, the Commission received reports from some parents about restrictive interventions being used in schools, including the use of restraint and seclusion in locked rooms or other spaces, as a behaviour management tool.

It is important to note that although DEECD policy requires restraint to be reported, although DEECE policy require resistant to be reported, there is no legal requirement for a teacher or school in Victoria to report the use of restraint or seclusion of a student. This means that there is no reliable data on how frequently these practices occur, why they are used or the impact they have.

Nor is there any independent oversight of such practices. Adults using disability services enjoy the independent oversight of the Office of the Senior Practitioner when restrictive interventions are contemplated or used, yet children in our schools do not.

A number of parents said they had complained to the school about issues involving their child. Some expressed dissatisfaction about the complaints process, which is primarily resolved at the school level without an impartial third party. Many did not think it made any difference, and that legitimate concerns were often ignored. Other parents said they were fearful of repercussions for themselves or their child if they complained.

Further, complaints data is not recorded at a regional or statewide level, which means that emerging or systemic issues involving students with disabilities in either government, Catholic or Independent schools cannot be identified or addressed.

Building more inclusive schools

The Commission's report includes a series of practical and focused recommendations that seek to respond to the key issues highlighted by students with disabilities, their parents and educators.

Victorian teachers want to get things right for students with disabilities, and many of them are, but there is more to be done. There are numerous examples of good work taking place in schools across Victoria to include students with disabilities and maximise their educational outcomes. In nearly all cases, strong leadership from the top down, combined with a whole-of-school commitment to disability issues, were the primary drivers in developing an inclusive culture. Where this happened, students with disabilities were likely to enjoy a positive learning environment and achieve good educational outcomes.

Parents were acutely aware that many teachers just did not have the time, training and funding to deliver the best education to all students. However, many parents also shared a concern that accountability for meeting agreed educational outcomes for students with disabilities rests at the school level.

While local management of schools makes sense, a balance needs to be struck to ensure appropriate levels of accountability. Accordingly, this report includes recommendations to bolster existing external monitoring mechanisms to audit the performance of schools in this area using identified benchmarks.

Inclusive schools require a teacher workforce that is properly equipped to meet the learning needs of all students in their classrooms. Over half of the educators surveyed said they did not have the support, training and resources they needed to teach students with disabilities well.

To achieve this, pre-service training at university and ongoing professional development programs require a stronger focus on understanding and teaching students with disabilities, across the full range of disabilities.

Additional support and resources are also needed in our schools. For example, there is a clear lack of specialist support staff and they are in high demand across all schools. This requires significant workforce planning, which needs to be undertaken in partnership with allied health sectors and based on robust data on the prevalence of students with disabilities across Victoria's school system.

In addition, attention must be given to ensuring sufficient professional support is available in regional Victoria and that the workforce reflects and responds to the cultural diversity of the students and families accessing those services.

It is also clear that a significant proportion of educators require information on their legal obligation to accommodate students with disabilities in their classrooms, along with practical training on how to translate these requirements into their teaching practice and to make individualised adjustments. Professional support for educators is therefore critical to ensure that students with disabilities are not unfairly disadvantaged.

Discrimination against students with disabilities takes different forms. However, in many cases, discrimination is grounded in negative attitudes towards disability and the failure to set high expectations for these students. This can significantly limit the potential of these young people, both now and in the future.

All children and young people, no matter what their ability, have a right to education. They have right to a school system that meets their educational needs. They have a right to achieve and not be held back. This report seeks to provide a pathway towards that.

Recommendations

That noting the findings of this research, that:

Chapter 3: Enrolment

1. All Victorian schools collect and report data on the number and proportion of students for whom disability will affect education outcomes, refused enrolment, and that the relevant education authority publish annual aggregate data using this information.
2. Consistent with the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that education authorities provide a plain language guide for parents and schools setting out enrolment rights of students with disability. This should clearly state that students with disabilities must not be refused enrolment solely because they are ineligible for targeted funding under state or federal schemes.

Chapter 4: Participation

3. Mindful of the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that, as a matter of urgency, the Victorian Student Number is enhanced to enable the measurement of educational outcomes of students with disabilities in government schools.
4. Education authorities hold an annual round of parent and student feedback forums across Victoria to gather feedback on participation of students with disabilities in schools, and that this feedback is publicly reported along with actions to respond to it.

Chapter 5: Curriculum development and assessment

Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and Victorian Auditor-General's audit of programs for students with special learning needs, that:

5. Building on existing efforts, that the breadth and depth of curriculum and practice materials available to teachers to educate students with a range of disabilities be enhanced. Further, that monitoring be undertaken by education authorities to make sure these are reflected in teaching practice.
6. All Victorian schools conduct regular audits of venues used for school camps and other educational activities to ensure they are accessible to students with a wide range of disabilities, including intellectual, sensory and other disabilities.
7. The Victorian Curriculum and Assessment Authority establish a working group with the Department of Education and Early Childhood to formulate a simpler process for seeking and making adjustments for students with disability in Victorian Certificate of Education examinations. That this working party address inconsistencies in adjustments between in-school and Victorian Certificate of Education examinations; and remove any existing anomalies that may give rise to discrimination. This working group should include experts from various fields of disability, including augmented communication and use of technological advances to facilitate access.
8. Mindful of the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that data collected by the Department of Education and Early Childhood Development on the number and proportion of students with disabilities eligible for NAPLAN testing who are absented from testing be published in the department's annual report.

Chapter 6: Support services

Noting the findings of the Victorian Auditor-General's audit of programs for students with special learning needs, that:

9. The Department of Education and Early Childhood Development annually publish data on the demand and supply of student support officers in each region, and that this baseline data inform workforce planning and improved provision of support to students with disabilities in schools.
10. The Department of Health and the Department of Education and Early Childhood Development work together to consolidate and promote allied health workforce development and planning in regional Victoria, so that current unmet need for specialist support officers in Victorian schools is addressed. This workforce planning should also address the under-representation of Indigenous allied health professionals among student support officers in Victorian schools.

Chapter 7: Harassment and victimisation

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005*, that:

11. Education authorities develop and implement specialised programs in schools to target and address bullying on the basis of disability.
12. The annual government school Attitude to School Survey include a specific question measuring the incidence or witnessing of disability-based bullying. That this baseline data then be used to track improvements in the prevention of, and response to, targeted bullying. Catholic education authorities and Independent schools should undertake the same data collection and performance measurement using relevant student surveys.
13. Professional development courses for educators include specific training on identifying, preventing and responding to bullying based on disability (or other personal characteristic).
14. Departmental guidelines for student support groups and individual learning plans be amended to include consideration of proactive anti-bullying strategies for students with disability at risk of bullying.

Chapter 8: Student support groups and individual learning plans

Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

15. Individual learning plans be mandatory for students whose disability affects their education regardless of whether they are eligible for targeted funding.
16. Educational authorities, at a regional or diocese level undertake a review of a random sample of individual learning plans (and student support group records) to ensure these are of a satisfactory standard and are achieving educational outcomes for the student. Further, that the Victorian Registration and Qualifications Authority inspect a similar random sample as part of the cyclical review of Independent schools and require the same in government and Catholic school reviews.

Chapter 9: Part time attendance

17. Education authorities collect and annually publish aggregate data on the number of suspensions and expulsions of students with disabilities from schools.
18. All Victorian schools report on the number of suspensions and expulsions of students with disability as part of their cyclical review to maintain registration as a school.
19. Noting that some Victorian schools already have a 'no suspension or expulsion of students with disability' policy, that this approach be examined by relevant education authorities with a view to mandating this in all schools.
20. Noting the findings of the *Report of the Review of Disability Standards for Education 2005*, and the Victorian Auditor-General's audit of programs for students with special learning needs, that any reduced attendance arrangements for a student with disability be consistent with Victorian laws, be time limited; accompanied by a return to school plan and:
 - a. approved by the student support group;
 - b. recorded in the student's individual learning plan;
 - c. in government schools, that this individual learning plan be submitted to the regional disability coordinator so they may monitor the student's return to school.

21. Government schools submit data to the Student Wellbeing Division, Department of Education and Early Childhood Development on the number, type, frequency, length and reason for reduced attendance patterns of students with disabilities as part of the mid-year school census and that this information be published in aggregate form in the department's annual report. In the first instance, this could relate to students eligible for Program for Students with Disabilities funding, and thereafter all students with disabilities.
22. The Department of Education and Early Childhood Development and the Department of Human Services develop a protocol for sharing information regarding students with disabilities on reduced attendance arrangements, and those excluded or frequently suspended from school. This should be developed in consultation with the Privacy Commissioner and the Child Safety Commissioner.
23. The Department of Human Services and the Department of Education and Early Childhood Development work together to improve consistency in behaviour supports for students with disabilities.

Chapter 10: Restrictive interventions

Noting the findings of the *Report of the Review of Disability Standards for Education 2005*, and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

24. The use of restrictive interventions in Victorian schools be regulated in the following manner:
 - a) That the *Education and Training Reform Act 2006* and the *Disability Act 2006* be amended to provide that regulation of restrictive interventions in Victorian schools (including Catholic and Independent schools) be transferred to the jurisdiction of the Office of the Senior Practitioner, Department of Human Services. **This is the Commission's preferred option.**
 - b) That, in the interim, the DEECD *Restraint of Student Policy* be amended to expressly state that:
 - The use of seclusion in government schools is prohibited
 - Whenever a restrictive intervention is used by a school that the parent must be notified
 - Whenever a restrictive intervention is used the student support group be convened to review the incident and put in place a plan to minimise the risk of such an intervention being used again.
 - Parents have the right to bring an independent third person or expert to the student support group to consider the incident.
 - If restrictive interventions are contemplated that these are included in the student's individual learning plan, and that this must be submitted to the regional disability coordinator.
 - Whenever a restrictive intervention used, it must be reported as a critical incident to the Emergency Management Unit, Department of Education and Early Childhood Development, and that this critical incident report must be passed to the Student Wellbeing Division so that they may monitor the frequency of restrictive interventions in government schools.
- and, that the Catholic Education Office develop and implement a policy on restrictive interventions, consistent with the DEECD *Restraint of Student Policy* (as amended above).
25. The *WorkSafe Guide to challenging behaviour risk prevention in specialist schools* be revised in consultation with the Office of the Senior Practitioner to ensure consistency with rights protected by the *Charter of Human Rights and Responsibilities Act 2006* and anti-discrimination laws.
 26. The *Education and Training Reform Act 2006* be amended to provide that any student subject to a restrictive intervention must have a positive behaviour plan put into place and its implementation monitored.
 27. That, building on the Principals' Association of Specialist Schools project on effectively responding to challenging and extreme behaviour, the Office of the Senior Practitioner on-line behaviour plan tool be adapted for use in all Victorian schools.
 28. Noting that positive behaviour support is more effective, that schools report to the relevant education authority, the name and details of organisations providing training to school staff on behaviour management, including where such training includes use of restraint and seclusion. This information should include details on the training courses or modules proposed and delivered.

Chapter 11: Transport

29. The Department of Education and Early Childhood Development allow students who reside outside the designated transport area for a specialist school to be eligible for bus transport where the student is enrolled at that school in order to maximise participation in education consistent with anti-discrimination laws or in other circumstances relating to the best interests of the child.
30. The Department of Education and Early Childhood Development remove the requirement that a student must attend a specialist school six days per fortnight in order to be eligible for transport assistance as this discriminates against students with disabilities attending less than three days per week.
31. Consistent with the dignity and rights of students with disabilities, that the Department of Education and Early Childhood Development reduce the maximum travel period on specialist school buses to one hour each way.
32. The Department of Education and Early Childhood Development mandate that all schools must provide disability awareness, equal opportunity law and Charter training for all specialist school bus drivers and chaperones, as part of their induction and ongoing professional development.

Chapter 12: Transition points in education

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005*, that:

33. Building upon existing guidance, the capacity of individual learning plans to improve transitions is enhanced through dedicated professional development opportunities and through the auditing of individual learning plans as identified at recommendation 16.
34. The Early Childhood Intervention Service provide an enhanced navigation and advocacy role for students with disability seeking to enrol at their first school, and that in order to ensure effective transition the ECIS support children with disability for the first year of schooling.
35. Existing programs to support effective transition from primary to secondary school, and post-school options be enhanced, including allowance for longer periods for transition support for students with disabilities.

36. The Department of Education and Early Childhood Development investigate if any systemic patterns of reductions in funding under Program for Students with Disabilities are occurring for students transitioning from primary to secondary school, publicly report on these findings and take action to prevent unreasonable reductions in funding.

Chapter 13: Complaints

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

37. In all Victorian schools, parent and student information materials regarding complaints be updated to include a clear statement of rights and obligations under anti-discrimination laws.
38. The Department of Education and Childhood Development include training in alternative dispute resolution for school principals and regional staff who have responsibility for handling complaints, and that Catholic Education Offices and Independent Schools Victoria develop similar training for school principals.
39. All complaints regarding government schools escalated to a regional or head office level be considered by a panel of persons that includes an independent person, and in the case of a student with disability, an independent person with expertise in disability issues.
40. All government school complaints regarding students from vulnerable groups, including Indigenous students with disabilities be referred for expert input and monitoring, for example from the Koori Education Unit in the Department of Education and Early Childhood Development.
41. All government schools be required to submit data on the nature and type of complaints received each year, and that this aggregate data be published on a regional and state-wide basis.

Chapter 14: Funding and resources

42. Noting the findings and recommendations of the Report of the *Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that the Department of Education and Early Childhood Development introduce key performance indicators for the Program for Students with Disabilities that are tied to educational outcomes. That these outcomes are measured in the first instance through a random audit of individual learning plans, and thereafter using an enhanced Victorian Student Number.
43. The Department of Education and Early Childhood Development undertake a review of eligibility criteria and the Educational Needs Questionnaire for the Program for Students with Disabilities to identify and remove any inherent bias against specific types and manifestations of disability.
44. The *Program for Students with Disabilities Guidelines* require schools to provide a clear report to parents on how funding allocated to the school is being used to make reasonable adjustments for the student, and that this information be included in plain language in the student's individual learning plan agreed with the parent.

Chapter 15: Workforce capacity

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

45. All undergraduate teacher courses provide a core subject dedicated to disability awareness, curriculum and pedagogy modifications to maximise participation by students with disability and legal obligations of teachers under anti-discrimination laws.
46. Building on existing leading practice, that all government schools be required to develop and implement a whole-of-school professional development program on disability awareness, inclusive education and use of individual learning plans as part of the Accountability and Improvement Framework for Victorian Government Schools. That all Catholic and Independent schools develop similar whole-of-school professional development programs.

47. The current roll-out of training to Victorian government schools regarding legal obligations under anti-discrimination laws extend beyond the existing two-year funding commitment, and that this training specifically include making adjustments across the entire curriculum, including participation in camps, excursions and other extra education activities. That similar training also be provided to staff in Catholic and Independent schools by the appropriate body.

Chapter 16: Leadership and accountability

48. The Victorian Registration and Qualifications Authority examine the following in school registration reviews and inspections:
 - a) sample of individual learning plans and student support group minutes
 - b) data on educational outcomes for students with disabilities enrolled at the school
 - c) evidence of whole-of-school professional development on compliance with the anti-discrimination laws, including the positive duty to eliminate discrimination as far as possible and, in the case of government schools, the *Charter of Human Rights and Responsibilities Act 2006*
 - d) incident records regarding use of seclusion and restraint
 - e) complaint data.
49. The inclusion of key performance indicators on participation and outcomes for students with disabilities in all school principals' performance development plans.
50. The *School Review Guidelines* be amended to provide that where a government school has students with disabilities enrolled that the critical friends appointed to conduct a school review must include a person with expertise in relevant disabilities.

Part 1: Background

Chapter 1: About the research

Aim of the project

Through this project, the Victorian Equal Opportunity and Human Rights Commission (the Commission) has sought to comprehend the broad range of experiences of students with disabilities in Victorian schools. Our aim is to use this research to shape future work aimed at eliminating discrimination and promoting human rights in schools.

This project focused on hearing directly from the people who are involved in schools. This meant listening to students, parents and educators from government, Independent and Catholic schools, including both mainstream and specialist schools. We wanted to hear about all aspects of students' experiences of school, such as enrolling at school, getting to and from school, their experiences in the classroom, assessments and support to participate in school life.

Ultimately, we wanted to understand what is working for students with disabilities so that we can support schools to promote best practice. We also wanted to understand what is not working so that we can understand how discrimination in education occurs and how it can be prevented.

The Commission's interest in the issue

Education is both a human right in itself and an indispensable means of realizing other human rights.³

Education is recognised as a human right at international law. It is a means of overcoming social and economic marginalisation and is a foundation for achieving other human rights. As the major provider of education in our state, schools have the potential to be the champions of human rights for children and young people in Victoria.

The United Nations *Convention on the Rights of Persons with Disabilities* makes it clear that people with disabilities have the right to education.⁴ Other international laws, including the *Convention on the Rights of the Child* and the *International Covenant on Economic, Social and Cultural Rights*, also protect the rights of children with disabilities.⁵ Australia has obligations under each of these treaties.

3 Committee on Economic, Social and Cultural Rights, *General Comment no. 13: The right to education*, 21st sess., E/C.12/1999/10 (8 December 1999) 1.

4 *Convention on the Rights of Persons with Disabilities* opened for signature 30 March 2007, A/RES/61/106, art. 24 (entered into force 3 May 2008).

5 *Convention on the Rights of the Child* opened for signature 20 November 1989 (entered into force 2 September 1990) arts 28–29; *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 19 December 1966, 999 UNTS 3, art. 13 (entered into force 3 January 1976).

In addition, the federal *Disability Discrimination Act 1992* and the Victorian *Equal Opportunity Act 2010* make disability discrimination in education unlawful. However, evidence suggests that these rights are not always fully realised in Australia.

For example, according to 2009 data, people with disabilities are less likely to have completed Year 12 and are less likely to hold a post-school qualification.⁶ Twenty-six per cent of people with a disability do not go beyond Year 10, compared to 18 per cent of people without a disability.⁷

The 2009 data indicates that people with disabilities are also more likely to be unemployed and have significantly less income than people who did not report disability.⁸ Indeed, 45 per cent of people with disabilities live in or near poverty, more than 2.5 times the rate of poverty experienced by the general population and more than double the Organisation for Economic Co-operation and Development average.⁹

Common sense tells us that improving levels of educational attainment is central to improving the lives of people with disabilities, as well benefiting the whole community. All Australian governments have acknowledged this through the current National Disability Strategy.¹⁰ This link has also been acknowledged in the Victorian *Draft State Disability Plan 2013–2016*, which notes that:

The wellbeing and progress of society as a whole is diminished when people with a disability do not have opportunities to fully develop their gifts and abilities through education.¹¹

How the project came about

Each year the Commission receives a significant number of complaints about disability discrimination in education. In 2010–11 the Commission received 64 such complaints, this rose to 86 complaints in 2011–12.¹² During this period, several parents, advocacy groups and members of the Commission's Disability Reference Group approached the Commission to raise concerns about the experiences of students with disabilities in schools. This included concerns about students being pushed into part-time attendance or home-schooling; concerns about the Program for Students with Disabilities (PSD); a perceived failure to make reasonable adjustments to accommodate students with disabilities; the use of restraint in schools; and grievance processes within the Department of Education and Early Childhood Development (DEECD).

The Commission's functions include activities to eliminate discrimination and promote human rights. This includes supporting schools to understand and deliver on their obligations under equal opportunity legislation and for government schools to meet their obligations under the *Charter of Human Rights and Responsibilities Act 2006*. In order to do this, the Commission needs to understand what schools are doing well and where they can struggle to meet their equal opportunity and human rights obligations.

The Commission wrote to the department seeking information about the experiences of students with disabilities. We received some information but felt that there were gaps in our knowledge of the experience of students with disabilities in Victorian schools.

As a result, the Commission had a keen interest in hearing directly from students with disabilities, their parents and educators about their experiences in schools in order to supplement the information DEECD was able to provide.

6 Australian Bureau of Statistics, above n 1, 'Education'.

7 Australian Bureau of Statistics 2010, *Survey of education training and experience 2009: state and territory Australian tables*, 'Table 8: Persons aged 15–64 years, selected characteristics – by level of highest educational attainment, Victoria', cat. no. 6278.0.55, ABS, Canberra, cited in State of Victoria, *Draft Disability Plan 2013–2016* (2012) 13.

8 Australian Bureau of Statistics, above n 1, 'Labour force'.

9 PricewaterhouseCoopers, *Disability expectations: Investing in a better life, a stronger Australia* (2011) 9.

10 Commonwealth of Australia, *National Disability Strategy 2010–2020: an initiative of the Council of Australian Governments* (2011) 53.

11 State of Victoria, *Draft State Disability Plan 2013–2016* (2012) 13.

12 Victorian Equal Opportunity and Human Rights Commission, Statistics 2011/12. Not all of these complaints related to schools.

Context for the research

Student population with disabilities

There are nearly 542,000 students in Victorian government schools.¹³ DEECD estimates that 20 per cent of these students have difficulties learning.¹⁴ Disability can be one of the factors contributing to this. In common with other Australian jurisdictions within this group of students, there is a subset who are eligible for individual targeted funding. In Victoria the funding is called the Program for Students with Disabilities (PSD). In 2011, 20,883 students received PSD funding. That is around 3.9 per cent of the government school population.¹⁵

Indigenous students are over-represented in the PSD population, with 3.6 per cent of PSD eligible students being Indigenous, compared to 1.6 per cent of the Victorian school population being Indigenous.¹⁶

Catholic schools have experienced significant growth in enrolment of students with disabilities in the past decade. The number of students receiving targeted funding based on disability in the Catholic system in Victoria has increased from 3,273 students in 2001 to around 8,200 students in 2012. That is around 4.2 per cent of the total Catholic school student population. The Catholic Education Commission Victoria estimates that another 10 per cent of students require adjustments under anti-discrimination law.¹⁷

In 2011, 171 Victorian Independent schools received targeted funding from the Australian Government to support over 2,079 students with disabilities.¹⁸ This represents 1.7 per cent of the total Independent school population in Victoria.¹⁹ However, as noted by Independent Schools Victoria, '[t]he number of Victorian Independent school students who would meet the definition of disability under the Disability Discrimination Act would be substantially greater'.²⁰

Policy context

Both the Victorian Government and the Australian Government have implemented policies and programs that address the education of students with disabilities. These policies and programs often change, as governments seek to respond to students' current and future needs. Mindful that policies can change, the following is a brief description of the policy context for this project. More detailed discussion of the policy environment is provided in Part 6.

Inclusive education policy in Victorian schools

Victorian government schools operate under the principle of inclusive education. This acknowledges that vulnerable students and students with disabilities require support to participate at school. In many cases, teachers can provide this support through adjusting their teaching methods and focusing on an individual approach to learning. However, some students need significant adjustments or intensive support to access education.

DEECD's efforts to ensure government schools are inclusive are made up of several components. One component is in general learning and teaching; that is, resourced through the school's general budget, including the student resource package and teacher professional development.

13 At March 2012 there were 194,108 students in Catholic schools in Victoria and 123,120 students in Independent schools. State of Victoria, Department of Education and Early Childhood Development, *Summary Statistics for Victorian Schools* (March 2012). <<http://www.education.vic.gov.au/about/publications/newsinfo/factsandfigures.htm>> at 28 June 2012.

14 <http://www.audit.vic.gov.au/audits_in_progress/audits_details.aspx#learning> at 5 July 2012.

15 Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

16 That is 3.6 per cent of the 3.9 per cent of all government school students who are eligible for this funding. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 13 August 2012.

17 Catholic Education Commission Victoria and Commonwealth, *Catholic Education Commission Victoria Ltd (CECV), Implementation Plan for the More Support for Students with Disabilities Initiative: National Partnership Agreement for More Support for Students with Disabilities* (2012) 10.

18 Independent Schools Victoria and Commonwealth, *Victorian Independent Implementation Plan for the More Support for Students with Disabilities Initiative: National Partnership Agreement for More Support for Students with Disabilities* (2012) 3.

19 In 2011 there were 123,120 students enrolled in 215 Independent schools in Victoria. Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

20 Independent Schools Victoria and Commonwealth, above n 18, 3.

The inclusive education policy also supports services and programs targeted at students with disabilities. These include:

- a specialist workforce, such as student support officers, allied health staff, visiting teachers, Primary Welfare Officers and autism coaches
- services, such as intellectual disability and severe language disorder assessment testing services, Statewide Vision Resource Centre, Education Vision Assessment clinic and transport provision to specialist schools
- programs, including the Language Support Program funding given directly to schools and targeted funding through the PSD. Other program responses include specialist schools and specialist units in mainstream schools.²¹

The PSD is the vehicle for providing additional funding for students that DEECD considers face additional difficulties accessing education and whose needs cannot be met through the range of universal supports resourced by the school's general budget and educational resources and materials targeted at supporting schools. Eligibility for the PSD is based on seven categories of disability and is targeted to students with moderate-to-high needs for educational support.

The most recent data for Victorian government schools shows the following profile of disability among those students in receipt of PSD funding.

The PSD and other funding issues are discussed in more detail in Chapter 14.²²

Additional Commonwealth funding for students with disabilities

In May 2011 the Commonwealth Government announced a short-term initiative to provide additional funding in 2012 and 2013 to support students with disabilities in government and non-government schools. The Victorian Government committed to specific strategies, with several targeted at providing teacher professional development and support in educating students with disabilities.²³ The Catholic Education Commission of Victoria and Independent Schools Victoria also submitted implementation plans under this initiative.²⁴

Figure 1: Number of students eligible for PSD funding by disability type 2008–12²²

Disability category	2008	2009	2010	2011	Proportion of government school enrolments (2011)
Autism spectrum disorder	3,028	3,604	4,103	4,396	0.8%
Hearing impairment	600	603	601	608	0.1%
Intellectual disability	12,003	12,583	13,066	13,392	2.5%
Physical disability	1,081	1,072	1,049	976	0.2%
Severe behaviour disorder	824	891	1,070	1,141	0.2%
Severe language disorder (with critical educational needs)	234	262	284	263	0.05%
Vision impairment	101	101	97	107	0.02%
Total students with PSD	17,871	19,115	20,269	20,883	3.9%

²¹ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 21 November 2011.

²² Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 19 June 2012.

²³ Victoria and Commonwealth, *Victoria's Implementation Plan for the More Support for Students with Disabilities Initiative: National Partnership Agreement for More Support for Students with Disabilities (2012) 6–7*. <http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/education.aspx> at 8 July 2012.

²⁴ More detail about each of these three agreements is provided in Part 6.

Through the *More Support for Students with Disabilities* initiative, the Australian Government will provide an additional \$47.8 million in funding to Victoria over the next two years. Of this, \$37.2 million will go to the government school systems, \$8.1 million will go to the Catholic system and \$2.5 million will go to Independent schools.²⁵

The Australian Government also provides funding to Catholic and Independent schools generally, as well as through specific funding allocations under the federal Program for Students with Disabilities. However, this funding is much lower than the state system's PSD.²⁶

Commonwealth review of school funding

In April 2010, the Commonwealth Government initiated a comprehensive review of funding arrangements for Australian schools (the Gonski Review). The Review Panel delivered its final report in December 2011.²⁷ The government's response was announced on 3 September 2012.

The panel recommended that, in the future, the costs of supporting students with disabilities should be included as an additional 'loading' within the Schooling Resource Standard in both government and non-government schools.²⁸

This loading would be calculated based on data on the prevalence of disability and the level of adjustments needed by students with disabilities. However, to achieve this, a common definition of disability needs to be agreed and modelling undertaken on the value of such a loading.

The Council of Australian Governments is currently developing a nationally consistent reporting tool on adjustments made for students with disabilities, bringing the definition of disability into line with the Disability Discrimination Act.²⁹

This work recognises that states and territories have inconsistent definitions of disability and are not keeping consistent data.

From May to July 2011, the new reporting tool was trialled in 150 schools across Australia. The trial required schools to report on the number of students with a diagnosed or verified disability (using the definition provided by the Disability Discrimination Act), the level adjustments provided for these students (from no adjustments made to extensive adjustments) and supplementary information about each child's disability under four categories (physical, cognitive, sensory, social/emotional). The trial found that the model was valid, easy to use and suitable for collecting consistent data.³⁰

While this new model does not affect funding, it might provide nationally consistent data that could inform changes to funding, such as those recommended in the Gonski Review.

Draft State Disability Plan 2013–2016

Consultation on the draft State Disability Plan 2013–2016 is currently underway and the plan will be finalised by the end of 2012. The draft plan identifies education as one of the foundations for a good life, and has a clear commitment to improving the participation and educational outcomes of students with disabilities.

The draft plan has prioritised education as one of its four leading areas for action over the next few years. It includes a specific objective to 'strengthen the capacity of universal education and learning services to respond to the needs and aspirations of people with a disability' and sets out a series of high-level principles and outcomes.³¹ These will be built on through a series of biennial implementation plans that will contain more specific actions and measures for work in this area.

Legal context

Victorian legislation

The Equal Opportunity Act and the Charter form the legal context to this research. Under the Equal Opportunity Act, schools must not discriminate against students with disabilities.³² They must make reasonable adjustments to allow students with disabilities to participate in educational programs.³³ Schools also have a positive duty to eliminate discrimination as far as possible.³⁴

25 See <http://www.deewr.gov.au/Schooling/Programs/Documents/VIC_MSSD_Factsheet.pdf> at 12 July 2012.

26 More detail about funding is provided in Chapter 14.

27 Australian Government, Final Report of the Review of School Funding (2012). See <<http://www.schoolfunding.gov.au/node/7>> at 28 June 2012.

28 The School Resource Standard is the amount of global funding provided to schools by the Australian Government. This differs from the Student Resource Package which is the term used to describe a government school's budget in Victorian schools.

29 See <<http://www.deewr.gov.au/Schooling/Programs/Pages/swdtrial.aspx>> at 11 July 2011.

30 PricewaterhouseCoopers, *Trial of a model for collecting nationally consistent data on school students with disability* (2011) 1–2.

31 State of Victoria, 'Draft State Disability Plan', above n 11, 24.

32 *Equal Opportunity Act 2010* s 38.

33 *Equal Opportunity Act 2010* s 40.

34 *Equal Opportunity Act 2010* s 15.

Under the Charter, government schools have an obligation to consider, promote and protect human rights when they deliver services.³⁵ All Victorians have rights under the Charter, including the right to protection from discrimination. In addition, children have a right to protection in their best interests.

Commonwealth legislation

The Disability Discrimination Act also makes it unlawful to discriminate against a student with disability in education.

The *Disability Standards for Education 2005* (the Standards) clarify the obligations of education and training providers to ensure that students with disabilities are able to access and participate in education and training on the same basis as those without disabilities. They are organised into five areas: enrolment; participation; curriculum development, accreditation and delivery; Student Support Services; and harassment and victimisation.

The Standards provide practical guidance about the upholding the rights of students with disabilities under the Disability Discrimination Act and place responsibilities on education providers to make reasonable changes to accommodate the needs of students with disabilities. They also require education providers to establish strategies to prevent and respond to harassment directed at students with disabilities.

Review of the Disability Standards for Education 2005

The *Review of Disability Standards for Education 2005* (the review) was undertaken to determine whether the Standards remain an efficient mechanism for Government to achieve the objectives of the Disability Discrimination Act in the education sector.

As part of the review, written submissions were received from organisations and individuals across the country, and national roundtable discussions were held with key stakeholders and representative bodies.³⁶

The review considered whether, within a contemporary education context, the Standards were clarifying obligations for education providers, students and families, assisting students to access and participate in education, and contributing

to ending discrimination against students with disability.

A report was prepared on the findings and recommendations of the review and released in August 2012.³⁷ Many of the issues raised in that report are considered in the Commission's research.

The review found:

In spite of the intent of the Standards, some reported that ongoing discrimination and a lack of awareness across all areas on education continues to be an extremely significant area of concern for students with disability and their families. Many families reported that, through their education experiences, their children are subjected to: limited opportunities; low expectations; exclusion; bullying; discrimination; assault and violation of human rights.³⁸

The review found that the Standards provided a good framework for promoting student's rights to access and participate in education, but made a number of recommendations relating to implementation. These included recommendations about promoting the Standards, providing practical supporting information, clarifying key terms, improving accountability and providing appropriate resources to enable compliance.

The Australian Government is also considering consolidating all federal anti-discrimination legislation, including the Disability Discrimination Act, into a single Act. In its response to the review the Australian Government supported the recommendations, but indicated that they would defer any changes to the Standards until they had clarified the project to consolidate Commonwealth anti-discrimination laws.³⁹

However, whatever the outcomes of these reviews, schools will continue to have legal and policy obligations to provide education to students with disabilities that is of a high quality and avoids discrimination.

³⁵ Independent and Catholic schools are not bound by the Charter. *Charter of Human Rights and Responsibilities Act 2006* s 4(c).

³⁶ See <<http://www.deewr.gov.au/Schooling/Programs/Pages/disabilitystandardsforeducation.aspx>> at 15 August 2012.

³⁷ Australian Government, Department of Education, Employment and Workplace Relations, *Report on the review of the Disability Standards for Education 2005* (2012).

³⁸ *Ibid* 21.

³⁹ Australian Government, *Government response to the Review of the Disability Standards for Education 2005* (2012) 3.

Chapter 2: Methodology

The Commission's research examined government, Catholic and Independent schools, including mainstream schools and specialist schools.

We collected data on the experiences of students with disabilities, parents and educators.

Ethics approval for the research was granted by the Department of Justice Human Research Ethics Committee.⁴⁰

A total of 1,827 people and organisations took part in this research.

The project used a qualitative approach that entailed:

Project Components

Survey of educators, parents and students

The survey was open from 21 November to 31 March 2012.

- Separate survey instruments were offered to educators, parents and students. Educators included principals, classroom teachers, integration aides and specialist support staff working in schools.

Participation in the survey was primarily online. However, participants had the option of printing the form, completing it and sending it by post to the Commission.

More than 1,500 people completed the survey. Of these:

- 883 were educators
- 617 were parents or carers
- 60 were students.

The survey asked about experiences of disability discrimination in Victorian schools. It included free text options for participants. This provided qualitative information about how individuals interpret and make sense of their experiences of discrimination. The survey was available on opt-in basis and promoted through community networks. It was not conducted through schools.

Phone-in

The Commission held a statewide phone-in on 3 December 2012. While this was originally intended to be in operation for one day only, the Commission extended phone-in access for the remainder of the survey period. This provided an opportunity for educators, parents and students to contact the Commission and tell their stories in their own words.

Fifty-two participants used this method. Of these, 45 callers (84.9 per cent) were parents or carers, including two grandparents.

40 Ethics approval number CF/11/22681.

'Have a say' days

The Commission facilitated 15 'have a say' days across Victoria, involving 169 participants. These two-hour meetings provided an important opportunity for the Commission to hear first-hand about experiences in the school system.

Sessions were available for educators, parents and students.

- Six sessions with parents were held in Bendigo, Traralgon, Ballarat, and Geelong, as well as two sessions in Shepparton, and one at Rumbalara Family Services.
- Three sessions with educators were held in Ballarat, Bendigo and Traralgon.
- Two sessions with community service organisations were held in Shepparton and Geelong.
- One session with families of children with intellectual disabilities was held in Melbourne.
- One session with parents and students with hearing disability was held in Ballarat.
- One session for deaf secondary students was held at Deaf Children Australia, Melbourne.
- One session was held with the school council of a specialist school in Melbourne, which included parents and educators.

Submissions

The Commission received 11 submissions from various community and professional organisations that have contact with students with disabilities.

Case studies

The Commission received 38 case studies, with 35 received by email. Case studies were also provided through interviews conducted following regional 'have a say' sessions and by the critical friends groups.

Of 38 case studies received:

- 24 were from parents or carers, including one grandparent
- nine were from educators
- two were from community service organisations
- one preschool field officer, one dyslexia expert and one communications specialist also responded.

Of the nine educators who submitted case studies:

- five were specialist support providers working in schools
- two were school principals
- one was a classroom teacher
- one was a school council member.

Critical friends groups

Mindful of the experiences of students with disabilities from culturally and linguistically diverse (CALD) and refugee backgrounds, and working in partnership with the Ethnic Communities' Council of Victoria, the Commission met with representatives of CALD organisations to test the Commission's initial findings and explore the commonalities and differences for CALD and refugee school students. A similar critical friends group from the Victorian Aboriginal Disability Network provided input on the specific experiences of Indigenous students with disabilities.

Key informant interviews

Key stakeholders were interviewed using a semi-structured format. Interviews were conducted with the Department of Education and Early Childhood Education (DEECD), Catholic Education Office Melbourne, Independent Schools Victoria, Office of the Senior Practitioner, Department of Human Services, and the Disability Services Commissioner.

Other key steps in the project included:

- **examination of aggregate de-identified DEECD data** to measure enrolment rates for students with disabilities in Victorian schools across the government and Independent sectors and between mainstream and specialist schools, as well as expressed demand for Program for Students with Disabilities (PSD) funding in government schools
- **legislative and policy review** to describe policy and practice efforts to date, as well as any planned initiatives
- **collation of policy documents and research material** to provide context for the research, including a comparative analysis with other jurisdictions to identify possible policy options that can be localised to the Victorian context
- **publication of a final report.**

Limitations of the research

As qualitative research based on self-selecting survey participation, this project has a number of limitations, which are outlined below.

The sample

While other data was used to support findings, relying primarily on self-reported experiences necessarily contains some limitations when extrapolating results to the wider community. Nevertheless, there is significant consistency in messages from parents and students describing barriers to participation for students with disabilities, and the corresponding messages from educators about the need for additional support for schools to fulfil their legal obligations.

The case studies and 'have a say' data provide the perspectives of individual participants and should be read with this in mind.

Identifying research participants

Survey and case study participants became aware of the research through networks and promotion, including through websites, newsletters and e-alerts from parent, carer, teacher and youth organisations.⁴¹

This approach may have led to either over-reporting or under-reporting of discrimination compared to a random sample; however, given the nature of the topic being researched, it was considered the most appropriate means of recruiting participants.

Notably, there was an under-representation of Catholic and Independent school students and parents among survey respondents. For example, while 22.5 per cent of students in Victoria attend Catholic schools, only ten per cent of parents in our survey were from that system.

Further, there was a very low participation in the survey by educators from the Independent and Catholic school sectors (less than 4 per cent). The prevalence of government school educators was likely caused by promotion of the survey by the Australian Education Union, which emailed its members to inform them of the research. The Independent Education Union placed information about the research on its website.

Student participation

The Commission had hoped to gather the views and experiences of students with disabilities, while recognising that students' capacity to give consent would be informed by the maturity of the young person and the particular vulnerability that may arise from their disability.

For this reason, survey participation was limited to secondary students over 13 years of age. In addition, a prompt was included in the survey to inform students that they may wish to discuss the survey with their parents before completing it.

To encourage participation, the Commission promoted the survey via support networks such as the Youth Disability Advocacy Service. In addition, the Commission worked with Deaf Children Australia to hold a 'have a say' day for deaf students.

However, only a small number of students participated in the survey (60 students). Ten students participated at the Commission's 'have a say' days and one took part in the phone-in.

Indigenous people

The sample included very few participants who identified as Indigenous. This means that we were unable to gather views directly from large numbers of Indigenous families. However, our 'have a say' day at Rumbalara Family Services gave the Commission an opportunity to speak directly to parents, support staff and organisations.

The Commission also values the input of the Victorian Aboriginal Disability Network members, who generously gave their time in a critical friends group to discuss the issues. A number of members have direct recent experience of children facing discrimination in schools, within family or community networks. The insights gained from this discussion were valuable to the research.

Students from CALD backgrounds

The sample also included very few participants who identified as coming from a CALD or refugee background. Again, the Commission relied on a critical friends group to supplement this data and provide community perspectives on the issues.

41 Of the 603 parents who responded to this survey question, 40.1 per cent reported being members of a parent or carer network or support group.

Terminology

Disability

The term 'disability' is used in this report. The Equal Opportunity Act and the Disability Discrimination Act contain broad definitions of disability. These definitions include physical, intellectual, psychiatric, sensory, neurological and learning disabilities, short-term conditions and illnesses.

The DEECD acknowledges these broad definitions of disability. However, when it refers to students with students with disabilities in data and other reports it limits the term to refer only to students in receipt of PSD funding. As one part of the inclusive education policy, PSD funding is targeted at students who fit into one of seven disability types and demonstrated moderate-to-high need for support.

This research looks into the experiences of students with all types of disabilities and levels of need. It is not restricted to PSD-funded students.

The Commission recognises that some members of the Victorian Aboriginal community do not recognise or use the term 'disability' and prefer the term 'special needs', reflecting the different strengths and abilities of people.

The Commission also acknowledges that some culturally and linguistically diverse communities may not view certain conditions as 'disability'. In some cases, this reflects resistance to categorisation; and in other cases it might reflect a fear of stigma.

Inclusive education

Inclusive education is the term used in Victoria to mean that students with disabilities and other vulnerable students are able to participate in education on the same basis as other students. In Victoria, the policy of inclusive education includes several components, including universal learning and teaching; specialist workforce and programs and targeted funding programs and intensive intervention.

Participation on the same basis as other students

A key concept in equal opportunity law, and expressly provided for in the Standards, is that students with disabilities have a right to participate in education on the same basis as other students. This means they have a right to have the same or equivalent opportunities and choices as other students in the courses, programs and services that a school offers.

A glossary of terms can be found at the end on page 217.

Part 2: Experiences

The *Disability Standards for Education 2005* (the Standards) clarify and elaborate the rights of people with disabilities and the corresponding obligations of education providers under the federal *Disability Discrimination Act 1992*.

The Standards operate concurrently with the *Equal Opportunity Act 2010*. They cover the following areas:

- enrolment
- participation
- curriculum development, accreditation and delivery
- student support services
- elimination of harassment and victimisation.

Each part of the Standards sets out:

- the rights of students with disabilities in relation to education
- the legal obligations or responsibilities of education providers
- the measures that may be implemented to comply with the requirements of the Standards.

This part of the report discusses the findings of the Commission's research in each of these five areas.

Chapter 3: Enrolment

Standards for enrolment

The right

Students with disabilities have the right to seek admission and enrol in schools on the same basis as prospective students without disability. This includes the right to reasonable adjustments that are necessary to ensure that they are able to enrol on the same basis as students without disabilities.

'On the same basis' means that a student with disability must have opportunities and choices that are comparable with those offered to students without disability in admission or enrolment.

Under the Standards, schools have a positive obligation to make reasonable adjustments.⁴²

When a student with disability applies for admission to a school, that school must consider the application on the basis that the reasonable adjustment will be made.⁴³

Adjustments are measures or actions taken by the school to assist the student with disability to apply for enrolment or admission.⁴⁴

An adjustment is 'reasonable' if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with disability, the education provider, staff and other students.⁴⁵

If an adjustment is unreasonable, the school is not obliged to make it.

Requirements to meet the standard

Section 4.2 of the Standards sets out how this right is given effect. It requires schools to:

- take reasonable steps to ensure that the enrolment process is accessible – so that the prospective student with disability can apply on the same basis as other students, without experiencing discrimination

42 The Victorian *Equal Opportunity Act 2010* also requires education providers to make reasonable adjustments to accommodate the disability of a student. A range of factors must be considered to determine if an adjustment is reasonable, including the effect on the person's ability to achieve learning outcomes and to participate in courses or programs, the financial impact of making the adjustment, and the consequence of not making the adjustment. *Equal Opportunity Act 2010* (Vic) s 40(3). There is no unjustifiable hardship provision in the *Equal Opportunity Act*.

43 *Disability Standards for Education 2005* (Cth) s 2.2.

44 *Disability Standards for Education 2005* (Cth) s 3.3(a)(i).

45 *Disability Standards for Education 2005* (Cth) s 3.4.

- consider students with disabilities in the same way as students without disabilities when deciding to offer a place at the school
- consult with the prospective students or their associates about the effect of the disability on their ability to seek enrolment; and any reasonable adjustments necessary ('associates' includes relatives and carers)
- consider and make any reasonable adjustments that are necessary, unless making such an adjustment would impose an 'unjustifiable hardship'.⁴⁶

Measures to comply

Section 4.3 of the Standards set out measures the school may implement. These include:

- ensuring information about the enrolment process addresses the needs of students with disabilities and is accessible to the student and parents
- providing information in a range of formats (depending on the resources and purposes of the provider) and within a reasonable time frame
- ensuring that students with disabilities have access to course or enrolment information and are able to ask questions about enrolling
- providing information that will assist students to select a course or subjects and make informed choices about enrolling
- designing enrolment procedures so that they can be completed by the student or their parents or carers without undue difficulty, including providing information about the enrolment process that can be easily understood.⁴⁷

Consultation is an essential part of ensuring compliance with the Standards.

46 Even for those adjustments that are reasonable under the Standard, changes still do not have to be made if this would impose 'unjustifiable hardship' on the education provider. All relevant circumstances are to be taken into account when assessing unjustifiable hardship including the benefit or detriment to any people concerned, the disability of the prospective student and the financial circumstances of the education provider. *Disability Standards for Education 2005* (Cth) s 10.2. The unjustifiable hardship terminology is not used in the *Equal Opportunity Act 2010* (Vic). Instead, there is guidance on what to take into account to work out whether a measure is reasonable.

47 See also Australian Government, Department of Education, Employment and Workplace Relations, *Review of Disability Standards 2005 Discussion Paper* (2010) 13.

Main findings

- Most students with disabilities are accepted for enrolment at the first school to which they apply. However, for those who are unsuccessful, it is likely that they need to make enrolment applications at many schools before being accepted.
- In some cases, the refusal to enrol a student because of his or her disability is explicitly stated; however, it appears more common that parents are subtly informed that the school will not be able to accommodate the child's needs. In either case, this can amount to unlawful discrimination.
- While some parents are steered towards specialist schools when they seek entry to a mainstream school, other parents who actively choose a specialist school are refused access because their child does not meet eligibility criteria. Most typically this is because the child's IQ is deemed to be too high.
- Enrolment at school can sometimes be the trigger for the identification of a child's disability; however, our research found that some children with disabilities may remain undiagnosed for many years and be regarded as badly behaved students. This can pose particular issues for students and families from Indigenous and culturally and linguistically diverse backgrounds, where the under-diagnosis or over-diagnosis of disability may occur due to the trauma some children in these communities have experienced.⁴⁸

Experiences of enrolment

In the survey, parents were asked about their experiences with enrolment, both at their child's last enrolment and any previous enrolments.⁴⁹ Parents were also asked, generally, what would have made enrolment processes better for them and their child. In addition, a number of parents raised enrolment issues through the Commission's phone-in, 'have a say' days and in case studies provided.

Educator surveys did not include direct questions about enrolment procedures. However, one group of educators put forward their perspective on enrolment issues at a 'have a say' day (HASD).⁵⁰

Students were not asked specifically about enrolment.

Positive experiences of enrolment for the majority

The vast majority of parents surveyed (85.4 per cent) reported that, for their most recent enrolment, their child was accepted at the first school to which they applied.⁵¹

Looking at the results by school stage, 91 per cent of parents who sought to enrol their child in secondary school (Years 7 to 12) had their child's application accepted.⁵²

Seventy-nine per cent of respondents had never had problems enrolling their child at school. These are positive results. As Vision Australia observed:

Most schools are very accommodating and accepting of enrolling a student with a vision impairment. There are well defined protocols and guidelines.⁵³

One parent recalled that her approach to a school resulted in a positive discussion about reasonable adjustments, even if not all the necessary adjustments could be made:

[The school is] very transparent ... they say 'we can't provide ramps etc because we can't get the funding ... however we can try and provide this, this and this ...'⁵⁴

For this particular parent, the openness of the school and their willingness to offer alternatives appears to have been a marker of a positive enrolment experience. Another parent of a child with an intellectual and a physical disability related that:

[My son] was three and in mainstream childcare with early intervention support. The principal [at the local primary school] came to me before [my son] enrolled and asked about infrastructure. This was amazing.⁵⁵

This school's proactive approach set up a positive relationship with this family early on in the enrolment process.

48 Where trauma leads to mental health problems, the mental illness will be regarded as a disability under law.

49 Most parents (66 per cent) described enrolment experiences at primary school, rather than secondary school (34 per cent). This reflects the proportion of parents answering the survey whose children were attending primary school, compared to secondary school.

50 HASD 3.

51 508 out of 595 parents.

52 182 out of 200 parents.

53 Submission 9, Vision Australia, 4.

54 HASD 6.

55 HASD 1.

Problems with enrolment

Enrolment is refused

While the majority of parents reported positive experiences, one in five said they had experienced problems in enrolment over the course of their child's schooling.⁵⁶

I wanted my child to attend an Independent school but there were none who could meet his complex needs. I tried to get him into a local mainstream school, but again there were none which could meet his needs. I tried to do a split enrolment between the specialist school and the local mainstream primary school but several of the local schools did not want to enrol him. In the end we found a local school that would allow him to attend as a visitor one day a week. He is not enrolled and as such, there is no support for him in the school. I am his full time carer while he is at school.⁵⁷

There could potentially also be under-reporting of enrolment difficulties, as some parents reported not attempting to enrol their child at certain schools. Some relied on advice or personal research and did not approach schools where they expected a negative reception:

We only applied where we knew he would be accepted and did not apply where empirical evidence suggests disabilities are not welcome.⁵⁸

The Department of Education and Early Childhood Development (DEECD) advised the Commission that:

Children of school age have the right to be admitted to their designated neighbourhood government school. Schools cannot refuse an enrolment based on disability and any instances where this is alleged to have occurred should be brought to the attention of the Regional Director.⁵⁹

56 122 out of 580 parents.

57 Parent of student attending a government mainstream school. Parent survey participant.

58 Parent of student attending a Catholic school. Parent survey participant.

59 Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 9 August 2012. Information about enrolment can be found at <<http://www.education.vic.gov.au/management/governance/spag/participation/intake/enrolment.htm>> at 15 August 2012. Also see <<http://www.education.vic.gov.au/management/governance/spag/participation/intake/admission.htm>> at 15 August 2012.

Most recent enrolment experience

Survey participants were asked about their most recent enrolment experiences.

Around 15 per cent of parents who sought enrolment reported that their child was not accepted to the first school to which they applied.⁶⁰ This was slightly more common among parents reporting an attempt to enrol their child in primary school (other than Prep).⁶¹

The responses appear to be roughly similar across children with all disability types, although parents of children with behaviour-related disability, including attention deficit hyperactivity disorder (ADHD) were slightly more likely to report having attempted multiple enrolments.⁶²

It was also slightly more common among parents of children who had applied for, but not received, Program for Students with Disabilities (PSD) funding.⁶³

Most parents whose first application was refused went on to enrol their child at another government mainstream school (72 per cent).⁶⁴ A smaller number enrolled in a specialist school (23 per cent)⁶⁵ or distance education.⁶⁶

Some parents reported that their child's application was explicitly refused. For example, parents said:

[The] principal told me, 'It wouldn't be appropriate for him to attend. We don't have children like that here.'⁶⁷

I spoke to the vice principal ... and explained my son's disorders and without even meeting my son, he simply told me the school does not have the time to support a child like that!⁶⁸

When I asked [the] principals of four local schools for an appointment to discuss enrolment, they refused to meet me. [They were] unwilling to discuss enrolment for a child with learning needs. One school advised me that even if we were located in their school zone, they would not accept us.⁶⁹

60 Eighty-seven of 595 parents.

61 Of 164 enrolment applications, 37 were not accepted (23 per cent). For prep enrolments, 31 out of 226 were not accepted (13.7 per cent).

62 Twenty three per cent, or 14 out of 60 parents.

63 Twenty-one per cent, or 20 out of 94 respondents.

64 Sixty-three out of 87 parents.

65 Twenty out of 87 parents.

66 Four parents out of 87.

67 Parent of student attending a government mainstream school. Parent survey participant.

68 Parent experience of attempting enrolment at a government mainstream primary school. Parent survey participant.

69 Parent of student now attending a government mainstream school. Parent survey participant.

Parents also reported that schools made generalised comments about experiences with other students with disabilities. For example, one parent described a classroom teacher's comments:

... she told us that she had had a bad experience with an Asperger child previously and was unlikely to see one fitting in with the group. We chose not to proceed with our application at that point.⁷⁰

Some parents tried to enrol in schools outside their zone, and were told that the school was full. While this is a legitimate reason for turning down an enrolment, several parents expressed scepticism that this was the true reason for the refusal. As one parent told the Commission:

I was told after providing information about my son's behaviour issues that enrolments were full ... when I rang to enrol an imaginary child [I] was offered a place immediately.⁷¹

For some parents, excessive questions or comments during the enrolment process conveyed a message to them that their child was unwelcome.⁷²

Several parents also said that schools referred to a lack of resources when refusing their child's application.⁷³ In some cases, the refusal was linked explicitly to lack of funding. For example, a participant at the Victorian Aboriginal Disability Network critical friends group said that the first question a school asks before accepting a child is what funding they are receiving for their disability. Other parents reported similar experiences:

[The school's] main concern was whether or not my son had funding – this was explicitly asked, repeatedly, at a number of schools I enquired to ...⁷⁴

Some parents of children who were eligible for funding felt that their children were more attractive to schools:

All the schools wanted him. I wonder ... did they just see him as 'funding'?⁷⁵

70 Parent experience of attempting enrolment at a government mainstream school. Parent survey participant.

71 Parent of student now attending a government mainstream school. Parent survey participant.

72 Discouragement of applications and being made to feel 'unwelcome' was a common theme among parents who had faced difficulties enrolling their child. See e.g. HASD 1.

73 See also State of Victoria, Victorian Auditor-General's Office, Programs for Students with Special Learning Needs (2012) 18.

74 Parent survey participant Q 10.

75 HASD 1.

While few educators commented on enrolment processes, one made an observation that reflected the experience of some parents:

Schools try to say that their site is not suitable for initial enrolment (and some other school would be better)...or they discourage and delay enrolment.⁷⁶

Another educator said:

All schools should be forced to enrol all students in their areas – not point them in the direction of 'more sympathetic' schools. The whole school/ community benefits from getting to know people who have disabilities.⁷⁷

Vision Australia related that there had been many instances 'where families have been subtly and blatantly discouraged from pursuing an enrolment in a school for their child'⁷⁸. It also noted:

While families find comments like these very awkward and unsettling, it is often the case that the self-advocacy and minimal support from organisations like Vision Australia for the rights of students do actually achieve a positive outcome in the end. It is of course the case that it should not be the job of parents to educate schools on their obligations and responsibilities.⁷⁹

Vision Australia suggested that the 'more difficult situation arises when there is some understanding of equal opportunity law on the part of a school, but where qualifications are expressed by the school in light of the requests for support'.⁸⁰ They gave examples of schools making participation dependent on 'the right teacher, a suitable peer group, appropriate resources', safety, funding and teacher time.⁸¹

These experiences reflect the national findings of the *Report on the Review of Disability Standards for Education 2005* which found that 'Even though it is clearly contrary to the requirement of the Standards, some schools refuse enrolment of students with disability'.⁸²

76 Specialist support provider, government mainstream school. Educator survey participant.

77 Integration aide, government mainstream school. Educator survey participant.

78 Submission 9, Vision Australia 4.

79 Submission 9, Vision Australia 5.

80 Submission 9, Vision Australia 5.

81 Submission 9, Vision Australia 5.

82 'In some cases, schools argue that there is a cap on the number of students with learning disability who can be supported'. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 15.

Timing of enrolment processes

One educator stated that late enrolments were a challenge for schools, '... especially as you need time to plan and respond to what the child needs'.⁸³

Conversely, one parent stated that their child's primary school had refused to lodge an application for funding prior to her child beginning Prep, despite being informed of the child's disability by the parent, preschool teacher and an inclusion support service. As a result, the child had one full year at school without 'the assistance she needed to achieve educational gains'.⁸⁴

Being steered towards specialist schools

Several participants described being pushed to enrol their children in specialist schools. As one parent said:

... I think the assumption that kids with a disability should go 'somewhere else' leads to a lot of isolation and schools not taking responsibility for the kids in their area.⁸⁵

One 'have a say' day participant felt this issue was particularly affecting Indigenous children:

[There are] a lot of children within schools [that are] classified as ADHD or Asperger's and autism, without an understanding of culture [or] families. [There is] a lot of misdiagnosis. Schools are fobbing [these children] off to [the] special school, taking them out of the [mainstream] system, when they shouldn't be.⁸⁶

Similarly, a parent advocate submitted:

Many parents report being discouraged by principals who point out all the issues that make their school unsuitable for a child with disabilities, and suggest that their child would be happier elsewhere, typically in segregated settings.⁸⁷

This advocate stated that some parents who persist with the reluctant school find the school unwilling to make adjustments.⁸⁸

Ineligibility for specialist schools

A number of parents who wanted to enrol their children at specialist schools reported that they were unable to do so because of their child's IQ test results:

My son has an IQ of 72, cut off for his special school is 70. At this stage, he will not be eligible to attend this school next year. He will not survive in a mainstream school. [I] am frantically searching for an alternative to no avail thus far. [I'm] looking at further assessments – ASD and behavioural, and need to have these completed before the cut off. This continues to be very stressful ... There has to be an easier way surely?⁸⁹

One parent expressed significant concern at her daughter who is in Year 4 and functioning at a Year 1 level but who cannot attend a specialist school because she has an IQ of 78.⁹⁰

One educator also raised this as an issue, noting it was particularly hard for students on the border of eligibility for specialist school.⁹¹

At the Commission's 'have a say' session for students with intellectual disability and their parents, the issue was raised of older students wanting to complete the Victorian Certificate of Applied Learning (VCAL) but who would not be accepted into programs because of their age.⁹²

Perceived lack of choice

Some parents spoke about being left with limited choices:

My child needs integration aide support and the level of disability funding at the Independent school was nowhere near enough. I would have had to fund it myself. The scores she received on her IQ test meant she was just ineligible for special school and the Special Developmental School environment would not have suited her. So she has been enrolled in the local mainstream school.⁹³

There is a problem with lack of choice – I drive past four schools to get to the school my kids can go to.⁹⁴

83 HASD 3.

84 Parent survey participant.

85 Parent of student attending a government mainstream school. Parent survey participant.

86 HASD 11.

87 Submission 4, Emmy Elbaum, Parent Advocate 1.

88 Submission 4, Emmy Elbaum, Parent Advocate 2.

89 Parent of student attending a government specialist school transitioning to high school. Parent survey participant.

90 Parent of student attending a government mainstream school. Parent survey participant.

91 HASD 3.

92 HASD 1.

93 Parent survey participant.

94 HASD 9.

For some, this lack of choice stemmed from lack of funding:

... the government funds up to \$35,000 for a deaf child who uses Auslan. This will not cover a teacher of the deaf and/or an Auslan interpreter full time. My child wants to attend the same school as her brother, a local primary school. [The] funds will not allow her to do that ... What other schools can I send my daughter to? A specialist deaf school? This involves travel, and limited choice.⁹⁵

Vision Australia noted that schools now differentiate themselves according to academic, arts or sport focus, or on particular teaching philosophies or methodologies. Vision Australia said:

It should be these freedoms of choice that a student and their parents ought to be occupied with, not a narrow depiction of freedom of choice trying to find a school of those available that will accept a student who is blind or has low vision.⁹⁶

Some parents had moved house in order to enrol their child in a school that they felt met their child's needs. The Commission received one case study from a family that had moved overseas:

I was unable to find a suitable secondary school for my daughter with Asperger's syndrome and ADHD in 2011. As a result, I (very reluctantly) moved to the United Kingdom where she is at an ASD specific school.⁹⁷

However, this move came at a financial and emotional cost to this family. Another parent survey participant said:

I am seriously looking at moving to the United States in the next few months to find a school that will actually help him.⁹⁸

Deficit-based approach

Two educators acknowledged that the enrolment and funding application processes could be distressing for parents of children with disabilities, particularly as these processes often focus on what children cannot do, rather than their strengths and abilities. One educator said:

Schools like to nurture and develop a relationship with families when it comes to enrolment because it's really harrowing – they are often 'gutted' by having to talk negatively about their child.⁹⁹

This was reflected in the response by one parent:

In order to secure funding at level 6, my child was described as an animal. It was degrading, humiliating and has seriously affected my relationship with my child. When I said the process was unfair, I was told that it had to be so in order to secure funding ... it is a very third-world process that my child needs to be so degraded to secure a full-time aide.¹⁰⁰

Concerns regarding a deficit-based process for determining eligibility for funding were a significant theme in this research and are discussed in more detail in Chapter 14.

Identification of disability

Enrolment at school is sometimes the trigger for the identification of a child's disability. Problems with the identification of disability were raised in meetings of both the culturally and linguistically diverse (CALD) and Victorian Aboriginal Disability Network critical friends groups, and at the Rumbalara Family Services 'have a say' day.

Indigenous students

Rumbalara Family Services 'have a say' day participants raised the issue of diagnosis of Indigenous children with disabilities. They described a problem both of under- and over-diagnosis of disability in Indigenous children. As an example of under-diagnosis, participants said that many students were reaching secondary school before their disability was recognised:

I know a family with a child with intellectual disability ... They got an assessment done (for his brother) – he also had intellectual disability. He had just started high school. Then they found out he needed glasses too ... he is now doing well, but the primary school did not assess him properly. He had significant sight problems but they did not pick it up.¹⁰¹

Conversely, some participants were concerned that Indigenous children who had experienced trauma were wrongly diagnosed as having autism spectrum disorder or ADHD:

You need to consider family background when looking at behaviour. [I know of] a nine-year-old who has had exposure to family violence ... he is in a shell, not responding ... they are saying he has Asperger's, trying to label him, but it is about trauma.¹⁰²

95 Parent survey.

96 Submission 9, Vision Australia 5.

97 Case study 20.

98 Parent survey participant.

99 HASD 3.

100 Parent of student attending a government specialist school. Parent survey participant.

101 HASD 11.

102 HASD 11.

Some participants also described experiences of being labelled as bad parents simply because they were Indigenous:

They blamed me for [my son's] developmental delay and claimed that he was that way because I took drugs during the pregnancy. I said, 'You are messing with the wrong Koori woman here. I did not take drugs. Would you have said that to a white woman?'¹⁰³

This kind of labelling is a powerful barrier to accessing support from schools.

Students from CALD backgrounds

The CALD critical friends group also pointed to issues with identification of disability. For example, they said that some communities may not regard mild intellectual disability as 'disability'. They also noted that this could reflect fear of stigma, as well as resistance to categorisation.¹⁰⁴ This may mean that families are reluctant to seek or accept assistance for their child at school.

The group also pointed out that, among students with a refugee experience, interrupted education could be wrongly identified as intellectual disability or developmental delay.¹⁰⁵

Barriers in the enrolment processes

A number of parents mentioned that attitudes of staff and the lack of funding and resources were barriers in the enrolment process.¹⁰⁶

One parent of a child attending a government mainstream primary school said that 'less red tape for funding purposes' would have improved the enrolment process.¹⁰⁷ Another voiced concerns about government specialist schools' enrolment processes, saying:

I was not permitted to observe the class (and not because of privacy issues) so I could make an informed decision about the best educational setting for my child.¹⁰⁸

One parent mentioned needing the assistance of an interpreter in order to enrol their child, but that this was not provided.¹⁰⁹

Opportunities for improvement

When asked generally what schools could do to improve their enrolment procedures, the most frequent responses were to improve consultation with parents (244 parents identified this) and to develop greater understanding of disability (236 parents). This is significant as both are precursors to a school's capacity to meet its legal obligations to make reasonable adjustments.

For example, parents wanted:

Staff that really do understand disability and listen to the child's needs and accept parental and specialist advice, rather than reacting defensively ...¹¹⁰

Schools and teaching staff need to be better informed about learning needs. It seems the current school has no resources to call upon in this area ... it is very hit and miss.¹¹¹

One parent suggested preparing a list of 'disability-friendly' schools.¹¹²

The difficulty of finding information about schools also emerged as a theme at a number of have a say days. For example, parents said:

There is no one support or place to go to for help. It is amazing how you can find out about things by chance, from someone who knows someone. This could be about funding, schools, Centrelink, the health system – it is amazing how you are completely in the dark. If you find someone who knows, you strike gold.¹¹³

Fifty-six parents in our survey highlighted the importance of schools providing clear information. Simple and accessible information is expressly required by the Disability Standards for Education. Educators also highlighted the importance of information about the enrolment process:

Families must have unbiased information on both mainstream and specialist settings when deciding about the best placement for their child.¹¹⁴

103 HASD 11.

104 CALD critical friends group.

105 CALD critical friends group.

106 Parent survey participant.

107 Parent survey participant.

108 Parent survey participant.

109 Parent survey participant.

110 Parent of student attending a primary school. Parent survey participant.

111 Parent of student attending a government mainstream primary school. Parent survey participant.

112 Parent survey participant.

113 HASD 1.

114 Classroom teacher, government specialist school. Educator survey participant.

At one 'have a say' day, parents discussed the need for clarification of zoning rules for primary schools. This was also mentioned by educators:

Schools will refuse to admit students with disabilities because they say that the student lives outside the zone. But the reality is that they do accept other students from outside the zone.¹¹⁵

One parent expressed the view that the DEECD could do better at publicising the support that is available at enrolment. Another suggested that each school should have a published policy on disability in the school and that this should be a mandatory component of enrolment information provided to all parents.¹¹⁶

Similarly, one educator suggested that enrolment processes could be improved by support for parents:

Parents need to have access to someone who knows the system and can guide them through ... some of their early intervention people do a great job – sometimes they will talk to the 'wrong person' who doesn't have the knowledge.¹¹⁷

Another educator added that families from low socioeconomic backgrounds needed particular support to navigate the system.¹¹⁸ One parent suggested that schools could employ a disability social worker.¹¹⁹

Several parents and educators mentioned that enrolment would be improved with better transition processes into school, from primary to secondary school and again at the post-school stage. This was an important theme in our research and is discussed further in Chapter 12.

Recommendations

That noting the findings of this research, that:

1. All Victorian schools collect and report data on the number and proportion of students for whom disability will affect education outcomes, refused enrolment and, that the relevant education authority publish annual aggregate data using this information.
2. Consistent with the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that education authorities provide a plain language guide for parents and schools setting out enrolment rights of students with disability. This should clearly state that students with disabilities must not be refused enrolment solely because they are ineligible for targeted funding under state or federal schemes.

115 HASD 13.

116 Parent survey participant.

117 HASD 3.

118 HASD 3.

119 Parent survey participant.

Chapter 4: Participation

Standards for participation

The right

Participation is the way in which a student engages with the learning activities offered by the school.

Students with disabilities have the right to participate in a school's courses or programs, and to use services and facilities provided by a school, on the same basis as students without disabilities. This includes the right to reasonable adjustments that are necessary to ensure that they are able to participate in education on the same basis as students without disabilities.¹²⁰

Requirements to meet the standard

Under the law, education providers are required to:

- take reasonable steps to ensure that the student is able to participate in courses and programs, and to use the facilities and services provided by the school, without experiencing discrimination
- consult with the student or their parents or carers about the effect of the disability on the student's ability to participate
- in light of that consultation, consider and make any reasonable adjustments that are necessary, unless making such an adjustment would impose an unjustifiable hardship.¹²¹

Measures to comply

Measures a school may implement include:

- making sure course or program activities are flexible enough for the student to participate
- reviewing course or program requirements in light of the information provided by the student or their parents or carers so as to include activities in which the student is able to participate, and repeating this process over time as necessary

- ensuring that the appropriate programs are necessary to enable participation by the student are negotiated, agreed and implemented
- making sure that additional support is provided to the student where necessary to assist him or her to achieve intended learning outcomes
- if a course or program necessarily includes an activity in which the student cannot participate, then a reasonable substitute must be offered
- ensuring that non-classroom and extracurricular activities are designed to include the student; for example, by using school camp venues that are accessible to students with physical disabilities or ensuring support staff for students with disabilities are available to attend school excursions.¹²²

The Standards do not mandate the nature of the adjustments, as these must be determined for each child. Adjustments might include providing equipment and/or resources at the school, such as handrails, ramps, lifts, raised toilet seats, tactile guides or other physical access to services that allow students to attend classes and other necessary educational activities. They also include the provision of education material and experiences in a format that is accessible to the student; for example, by using communication devices and the language of the child (e.g. Auslan or Braille).

Fundamentally, however, the Standards require schools to adjust teaching methods so that the student is taught in a way that meets his or her needs.

¹²⁰ *Disability Standards for Education 2005* (Cth) s 5.1 notes.

¹²¹ *Disability Standards for Education 2005* (Cth) s 5.2. See above n 42 for an explanation of unjustifiable hardship.

¹²² Measures to comply are contained in section 5.3 of the *Disability Standards for Education 2005* (Cth). See also Australian Government, 'Review of Disability Standards 2005 Discussion Paper', above n 47, 14.

Main findings

- The majority of parents reported that their child was not able to fully participate in education; however, educators and students with disabilities took a more positive view.
- The most common supports requested for students with disabilities are specialist therapists, followed by integration aides. There is significant unmet need for both of these supports in Victorian schools.
- Despite 30 years of equal opportunity legislation in Victoria, significant barriers to participation in education still exist for students with disabilities. These include inadequate knowledge and training in disability among teachers, the lack of time available for teachers to provide an individualised approach for students with disabilities, funding limitations and discriminatory attitudes.

Experiences of participation

In the survey, parents were asked whether their child was able to participate on the same basis as students who do not have a disability. Of the 584 parents who responded to this question, 46.9 per cent (274 respondents) said yes and 53.1 per cent (310 respondents) said no.

- 54 per cent of parents from government mainstream schools reported that their child was not able to fully participate.¹²³
- 52 per cent of parents from government specialist schools reported that their child was not able to fully participate.¹²⁴
- 43 per cent of parents in the Catholic system who responded to this question, answered no when asked if their child was able to participate.¹²⁵

The educator survey also asked respondents whether they thought students with disabilities participate on the same basis as others at their school. Of the 848 educators who responded to this question, 72.5 per cent (615 respondents) said students were able to participate.¹²⁶ Principals took an even more positive view, with 86.7 per cent reporting that students with disabilities were able to participate on the same basis as other students.

This suggests a significant gap in perception between parents and educators about the participation of students with disabilities.¹²⁷

When students were asked whether they participate on the same basis as other students, 68.3 per cent (41 respondents) said yes and 31.7 per cent (19 respondents) said no. When asked if they felt supported and looked after by their teachers, just over half of the students participating in the survey said yes.

Students were invited to comment on why they did or did not feel supported. Most mentioned teacher attitudes, teaching methods or a lack of understanding about their disability as reasons for not feeling supported or being unable to fully participate:

[Some] believe it's 'too risky' to take me places even at times when there is a low risk.¹²⁸

I don't think they believe that I have an acquired brain injury and they think I'm lazy. Other teachers are good because they come around and see if I'm struggling. They try and explain it in a simple way. They give me less work or different work to the other kids so that I can learn.¹²⁹

123 190 of 355 parents.

124 Forty-eight out of 93 parents.

125 Twenty-six out of 60 parents. The number of parents answering this question from the Independent school sector was negligible.

126 Twenty-eight per cent (233 respondents) said no. The participation rate reported by educators was somewhat higher for government specialist schools, with 82.4 per cent of educator respondents answering yes when asked if students with disabilities were able to participate in the same basis of students who do not have a disability.

127 It is acknowledged that the parents, educators and students participating in the survey may not have been from the same schools and so results are not directly comparable.

128 Student, Catholic mainstream school. Student survey participant.

129 Student, government mainstream school. Student survey participant.

Making reasonable adjustments

Types of adjustments requested

Parent requests

As part of the Commission's survey, parents were asked what sort of adjustments and supports they had requested. They were able to indicate more than one adjustment. The range of supports reported was broadly similar; however, some items were ranked differently in Catholic, Independent and government schools.

The most commonly requested adjustments in all schools were specialist staff such as occupational or speech therapists (255 respondents), closely followed by education support staff, such as integration aides (249 respondents).¹³⁰

Professional development for teachers was frequently mentioned as an adjustment that had been requested (188 respondents). Specialist equipment or material was mentioned by 169 respondents, while behaviour support was requested by 159 parents.

Specialist therapist and education support staff were the most frequently requested adjustments or supports across all school sectors, apart from government specialist schools where the second most frequently requested was behaviour support. Behaviour support was the equal highest requested support in Independent specialist schools.¹³¹

Figure 2: Adjustments requested by parents, ranked from most frequently requested to least

	Government mainstream school	Government specialist school	Catholic mainstream school	Independent mainstream school	Independent specialist school
1	education support staff	therapists	education support staff	education support staff	education support staff therapists behaviour support (equal)
2	therapists	behaviour support	therapists	therapists	
3	professional development for teachers	specialist equipment or materials	specialist equipment or materials	professional development for teachers	
4	specialist equipment or materials	education support staff	professional development for teachers	behaviour support special needs coordinator (equal)	professional development for teachers language support (equal)
5	behaviour support	language support	special needs coordinator		
6	special needs coordinator	professional development for teachers	behaviour support	specialist equipment or materials	special needs coordinator other (equal)
7	language support	special needs coordinator	other	language support	
8	other	other	language support	other	

¹³⁰ Student support services, including specialist therapists and integration aides are discussed in Chapter 6.

¹³¹ However, the sample size in Independent schools is very small.

Parents participating in the Commission's phone-in also spoke about adjustments they had requested, which were largely consistent with the findings above. For example, one parent from a government specialist school indicated they had great difficulty accessing the speech therapist for their school, who they said struggles to meet the needs of all students due to lack of funding and the school relying on only one speech therapist.¹³²

Another parent of a primary school student highlighted that children often do not get the one-on-one aide support they need, as integration aides are usually shared by more than one student due to funding constraints.¹³³ This was a common concern among many parents in our study.

Other requests for adjustments reported in our survey by parents included:

- an edu-link ear-set learning aid/microphone
- adjustments to VCE examinations
- reading recovery.

Parents who provided case studies to the Commission and those participating in 'have a say' days largely mirrored the kind of requests identified above. However, other more specific examples of adjustments requested included:

- microphones for teachers in the classroom¹³⁴
- using video captioning¹³⁵
- a laptop computer to assist a student who had trouble writing by hand¹³⁶
- specific teacher training on the use of visual aides and learning styles¹³⁷
- a request for poles in the school grounds to be painted to avoid injury to a child with visual impairment (the request was not followed and resulted in injury to the child).¹³⁸

132 Phone-in 6.

133 Phone-in 15.

134 HASD 4.

135 HASD 15.

136 HASD 2.

137 HASD 2.

138 HASD 6.

Were requested adjustments made?

Parent and teacher perspectives

In the survey, parents were asked whether adjustments were made when they were requested. Of those who responded to this question:

- 32 per cent of parents reported that the requested adjustment was made in full
- 58 per cent said the adjustment was partially made
- 10 per cent reported that no adjustment was made.¹³⁹

This was broadly similar across government, Catholic and Independent schools; however, adjustments were more likely to be made at government specialist schools.¹⁴⁰

This contrasts with the findings from the educator survey, where 66.9 per cent of educators reported that adjustments were fully made.

While two out of three educators reported that requested adjustments were fully made, only one out of three parents reported this.¹⁴¹

This variance may be due to different cohorts of educators and parents participating in the research. It may also reflect inconsistencies in how and when adjustments are made across the education system.

139 412 parents answered this question. Thirty reported a full adjustment, 240 reported a partial adjustment and 42 reported no adjustment being made following a request.

140 Forty-six per cent of parent respondents from government specialist schools reported that requested adjustments were fully made and a further 46 per cent were partially made.

141 Twenty per cent of educators said adjustments were not made and 13 per cent did not know.

Student experiences

Students identified a range of existing adjustments and supports to help them participate, with most reporting more than one support in place. These adjustments included:

- integration aide (31 students)
- extra time with teachers (28 students)
- learning programs suiting their needs (26 students)
- extra time for exams (24 students).¹⁴²

Some resources are shared. In other cases, the school had sought funding to support the adjustment:

School got funding for a lifting machine.¹⁴³

The literacy teacher takes me but only because she is my friend and she has some spare time. I have worked with her for 3 years. I go with her for a period a day. I get to catch up on my work and have a break from the other kids. I finish work and get to hand it in. It gives me the chance to chill out, relax and have a break from everybody else and be with the people I want to be with – my teacher and another boy. They listen to me and I appreciate that. I want this to continue because I need it.¹⁴⁴

Deaf students also identified a range of measures provided at their mainstream government school, including:

- flashlights to accompany the bell
- interpreters
- visual announcement systems
- using captions, or providing a transcript.¹⁴⁵

I have a hearing loss, so in order to support me in the best way possible, my teachers organise a note taker for the classes I want/need them for. At my school, it is school policy that if a deaf/hard of hearing student is in the classroom, they must only show films, video clips etc with captions, or if captions aren't available a detailed transcript must be provided. If neither of these are provided, the video clip must not be shown.¹⁴⁶

While these are positive results, six out of 10 students said they needed more help and support from their school.¹⁴⁷ Adjusting teaching styles in the classroom and beyond were identified by these students as a priority, along with understanding their disability.

Students also identified other adjustments that would help them to participate on the same basis as other students, including:

- more opportunities to type or use a laptop
- speech therapy and occupational therapy
- sign language assistance/AUSLAN interpreters
- physiotherapy
- ergonomic chairs
- being able to leave early on some days when not well enough to be at school
- extra time for exams, assessments and homework.

Some students just wanted to be noticed and taken seriously:

I never got aiding time in secondary school due to my IQ score but they never seemed to worry that I socially couldn't be included and no one cares. I needed assistance in the way the school work is presented. I can't cope – then I sensory seek.¹⁴⁸

I would have liked my requests for accommodations to be taken seriously by all staff, simply for needs to be accommodated without having to fight to justify oneself ... no different to someone who needs to use an asthma pump during class, or a diabetic who may need to nibble in long classes to keep blood sugar levels up.¹⁴⁹

142 Students could identify more than one adjustment made when answering this question.

143 Student, government mainstream school. Student survey participant.

144 Student, government school. Student survey participant.

145 Student survey participants.

146 Student, Independent school. Student survey participant.

147 Thirty-five out of 58 respondents (60.3 per cent).

148 Student survey participant.

149 Student survey participant.

Effectiveness of adjustments

The real key is that the individual child and family gets the attention and support to make things work, not through global programs but focused on the lived reality. Nurtured individuals do best – with a team around them that works, such as therapists, teachers, aides, other supports – this will minimise problems and fix problems as they arise.¹⁵⁰

Genuine participation means more than just getting by

While parents stressed the need for more flexible teaching methods and creative departures from meeting strict curriculum-based goals, they also stressed the importance of genuine participation and learning and highlighted that being able to participate at school means more than just getting by or being tolerated:

My child had no learning goals and no direction and frequently spent his time wandering the corridors of the school unattended with the comment ‘we lost him for a while today’ being said to me on a regular basis.¹⁵¹

[my] child was left alone to daydream and do whatever he felt like.¹⁵²

They don’t see a future for people with disability. When my daughter went on school camp the teachers organised a ‘career pathways’ session with everyone except her. The told her to ride the city tram instead.¹⁵³

These students need to be allowed to be the best they can possibly be. The stigmas are better but are still there. I am amazed sometimes at what my daughter has achieved ... there are things I never thought she would do and she has done them with ease. The students need goals and opportunities – they do not need to be shoved away in a corner.¹⁵⁴

Some educators also expressed concern:

Sometimes all parents hear is ‘Johnny is doing well’ ... that is the extent of the dialogue ... there is no vision for the child.¹⁵⁵

I have seen kids left in corridors. A girl in a wheelchair walked/wheeled around the school once a day to do something with her.¹⁵⁶

Consistency of adjustments over time

Participants also spoke about the need to ensure there is consistency and good planning in order for any adjustments to be effective. While a number of parents indicated that even the smallest adjustments can make a difference for their child, one parent suggested that if adjustments are not planned, understood, and implemented with consistency, then the outcomes can be worse than if adjustments had not been made.¹⁵⁷

A number of participants in the research said that inconsistent arrangements can further aggravate some students who generally respond well to consistent rules and expectations, including those with autism spectrum disorder. Where there is no consistency, students can become confused and anxious. It can also impact on their learning outcomes:

The principal changes the aide every year and this is not consistent with Autistic traits. My son progressed the most in the school year when he had an aide for two years straight.¹⁵⁸

The Commission also heard an example of a student with autism spectrum disorder having access to a quiet room to help cope with sensory overload. However, access to this room was later withdrawn due to the principal’s desire to encourage socialisation and the belief that the arrangement was ‘not sustainable’.¹⁵⁹

150 HASD 8.

151 Parent survey participant.

152 Parent of student attending a Catholic school. Parent survey participant.

153 Case study 36.

154 Parent of student with dual enrolment. Parent survey participant.

155 HASD 8.

156 Classroom teacher, government mainstream school. Educator survey participant.

157 Parent survey participant.

158 Parent of student attending a government mainstream school. Parent survey participant.

159 Parent survey participant.

Barriers to participation

Why aren't adjustments made?

When asked why their child was not able to participate at school on the same basis as students without disability, parents provided a range of reasons. The most common were that:

- teachers not having the necessary training (214 survey respondents)
- teachers not having time to address the child's needs (199 respondents)
- lack of specialised support, including integration aides (197 respondents)
- learning and behaviour techniques appropriate to child's disability not used (180 respondents).

Eighty-two parents said that technology and other physical aids were not being utilised, while 40 parents identified physical or environmental barriers.¹⁶⁰

This pattern was similar across all schools; however, parents with children attending government specialist schools ranked the lack of specialist support staff highest. In that cohort, not using learning and behaviour techniques was also ranked highly and equal to not enough teacher time.

Teachers were also asked why adjustments are not made, and suggested the following reasons:

- lack of funding and resources¹⁶¹
- lack of education and training
- lack of workforce capacity, or poor coordination and staff organisation
- school culture including poor leadership
- slowness associated with assessment processes for making adjustments.¹⁶²

A small number of participants in the Commission's survey indicated that students may not want adjustments or different treatment. Some parents spoke about their children not wanting to 'stand out' from the other students:

All the 'special' kids were always grouped together for sports excursions and school concert acts. This is not integrating the child into the mainstream. He never reached his full potential as he was 'labelled'.¹⁶³

One educator also spoke about the importance of not singling out students when making adjustments:

Not all students with disabilities require specific adjustments. They might not want to appear different to others and teachers might be very discreet by providing more moral support and checking in on the student more often.¹⁶⁴

The reasons behind some students and their parents not wanting to 'stand out' can be complex. They may relate to a fear of stigmatisation and rejection of the student and their parents by the school community. As indicated by an educator, this may also be reinforced through the school's eligibility criteria and the process of applying for funding:

There are many hoops and loops to get the Program for Students with Disabilities. This can be quite traumatic for parents. The end result is the support the child needs to participate, but the application processes for funding shifts the focus on what the child can't do/their deficiencies.¹⁶⁵

¹⁶⁰ Parents could report more than one reason why their child was unable to participate on the same basis as other students.

¹⁶¹ The Commission notes that in the review of the *Disability Standards for Education 2005* 'Funding and resourcing were raised as issues at every consultation and in the majority of submissions. Both user and provider representatives argued that there is not enough funding to effectively accommodate the needs of students with disability, even when there is a commitment to do so'. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, vii. The Commission's survey, 'have a say' day consultations and submissions revealed a similar consensus.

¹⁶² Educator survey participant.

¹⁶³ Parent of student attending a government mainstream school. Parent survey participant.

¹⁶⁴ Classroom teacher, government mainstream school. Educator survey participant.

¹⁶⁵ HASD 3.

Inconsistency of approach to making adjustments

Parents tended to report positive experiences as being dependent on an individual teacher, integration aide, special needs coordinator or principal. While this was not always the case, it does suggest that compliance with the Standards and the Equal Opportunity Act may be inconsistent across the education system:

The teacher last year was not actually inspired to teach my son and the school bureaucracy wasn't all that proactive in doing anything about it. Now that he has a new teacher he is happy and the teacher takes any problems (which are little more than would be presented by other children) in her stride. It is amazing the contrast between an angry boy (and that translates to parents as well) last year and the happy boy this year.¹⁶⁶

Before the current principal came, the principal was good. Great teacher and she had an autism program in place and was implementing it through the school. A new principal came and things changed. There was regression amongst students.¹⁶⁷

Our son made remarkable progress during his Prep year. He went from being almost preverbal e.g. a vocabulary of about 80 regularly used words and speech which was so badly mispronounced that it was difficult to understand) to being able read quite fluently and expressing himself in words. During his grade 1 year thanks to the negative attitude of his classroom teacher and poor quality aides which were changed regularly his language, behaviour and academic skills deteriorated significantly ...¹⁶⁸

Others parents expressed concern that adjustments could be made in one school setting, but not in another:

At [a mainstream] state primary school the school refused to administer vital medication on a daily basis because they had no experience with it and wouldn't accept even a doctor's letter for her rare endocrine disorder. I had to dose 'around' school hours and be 'on-call' in case of emergency, which made work extremely hard for me – so I'd call it a 'ripple effect'. The Independent school she attended for 15 months of secondary school had no problem with administering medication, as does her current special school.¹⁶⁹

166 Parent of student attending a Catholic mainstream school. Parent survey participant.

167 Phone-in 4.

168 Phone-in 8.

169 Parent survey participant.

Comments were also made regarding the timeliness of adjustments. For example, a therapist spoke about the significant delays they had experienced in trying to get appropriate adjustments at their school:

I have found schools reluctant to spend money on making facilities accessible, including basic needs such as a disabled toilet. Once the school approves, there is still a long time before the modifications are made.¹⁷⁰

Understanding disabilities

Autism does not mean intellectual impairment, just intellectual difference.¹⁷¹

Survey responses from parents, students and organisations cited a general lack of understanding within the school community about different disabilities and how these may affect the child's ability to learn. A number of parents made comments about teachers needing training about a range of disabilities.

Some parents also suggested that some teachers do not take mental health disorders seriously and they are not considered a 'real' disability:

The child is punished ... [the] child should have had [the] condition accepted, not challenged.¹⁷²

In regard to communication disabilities, Speech Pathology Australia noted:

Professional staff in the classroom can form the view that if the student is inarticulate, the underlying problem is an intellectual disability. This is not the case as these children are cognitively intact but have a severe language impairment.¹⁷³

Another consequence of failing to understand disability is that some students are challenged about their disability or it is not taken seriously:

She was referred to by a teacher as a 'princess who doesn't try'.¹⁷⁴

170 Case study 17.

171 Parent of student attending a government specialist school. Parent survey participant.

172 Parent of student attending a government mainstream school. Parent survey participant.

173 Submission 11, Speech Pathology Victoria 5–6.

174 Parent of student with learning disability attending a government mainstream school. Parent survey participant.

Some teachers don't understand Asperger's syndrome, they expect me to be like everyone else. I get worried a lot.¹⁷⁵

My medical condition is misunderstood. I have ME/CFS and I am bullied by teachers and students who don't understand and have been told ME/CFS is not a real disability.¹⁷⁶

A lack of understanding among educators about how to support students with disabilities can lead to students being isolated and not participating in class. Examples from parents included:

- a student with autism relying on other students for help and then being separated for talking
- teachers giving homework tasks verbally and a student therefore missing content, dates and deadlines
- a student sleeping on a beanbag all day because the teacher was too busy and the student too far behind
- a student sitting in a corner reading for the first half of the year. It was not until a psychologist tested his abilities that they realised he had fallen drastically behind.¹⁷⁷

More than one student identified occasions where external information sessions were held about particular disabilities but teachers did not take the opportunity to attend them. These students felt that attending the sessions would have helped their teachers to learn more about their disability and how to better support their needs.¹⁷⁸

The research also suggested that one of the consequences of failing to understand disability or adapt teaching styles is that students end up being punished for behavioural manifestations of their disability:

He was constantly treated like he was bad and his behaviour was by choice to buck the system.¹⁷⁹

Gaps in understanding about the nature of a student's disability were particularly apparent regarding behavioural and learning-related disabilities, such as autism spectrum disorder, Asperger's syndrome and dyslexia.

Parents spoke about the importance of teachers understanding what things can trigger anxiety in their children and how teachers can respond most effectively to behaviour that can seem aggressive. One parent reported being herself blamed for the behavioural manifestations of disabilities that their child's teachers did not fully understand.¹⁸⁰

A submission to the Commission by a disability advocate also spoke about the impacts of inappropriate behaviour management, which can cause deterioration in behaviour rather than addressing it. The submission suggested that rather than using 'positive behaviour plans' to identify and remove triggers to behaviour, schools are using them to identify behaviours that will attract punishment, detention, a policy of 'zero tolerance' and potential restraint. According to the submission, these result in a 'cyclical response' whereby the student is punished and labelled, leading to further reactions and punishment.¹⁸¹

More time, resources and skills needed

Some educators spoke about not being able to give their full attention to other children in their class, due to a lack of time to support the needs of children with disabilities in their classroom. This confirms findings of previous research:¹⁸²

It's really frustrating having kids with severe disabilities in your classes. This is because you spend most of your time dealing with them, and cannot give adequate help to other students in the class.¹⁸³

Others described a lack of support in building their knowledge of disabilities and how to teach in an inclusive environment. This is consistent with previous survey findings by the Australian Education Union. This survey of 11,694 educators conducted in 2010 found that nationally, 18 per cent of participants ranked 'additional support for students with disabilities or behavioural issues' as the most important thing that would most assist to improve student outcomes. Twenty-four per cent ranked this second.¹⁸⁴

180 Parent survey participant.

181 Submission 2, Julie Phillips, Disability Advocate, 6.

182 See also Australian Government, *Strategies to Support the Education of Students with Disabilities in Australian Schools; Report to Minister Peter Garrett AM MP, Minister for School Education, from the students with disabilities working group*, 15 December 2010 11.

183 Classroom teacher, government mainstream school. Educator survey participant.

184 Twenty per cent of the survey sample was from Victoria. Australian Education Union, *The State of Our Schools Survey 2010* (2010) 2,15.

175 Student, government mainstream school. Student survey participant.

176 Myalgic encephalomyelitis and chronic fatigue syndrome. Student, government mainstream school. Student survey participant.

177 Parent survey participants.

178 Student survey participant.

179 Parent of student attending an Independent specialist school. Parent survey participant.

The need to build capacity and support for educators through pre- and post-qualification training, ongoing professional development, leadership and support was a very strong theme in the research. These issues are discussed in Chapter 15.

Lack of funding seen as a barrier to participation

Parents made a number of comments about their understanding of funding arrangements and whether funding adequately supported their child's participation at school.¹⁸⁵ Some of the key points they made included:

- that the criteria for funding are discriminatory, with many parents complaining that children who need assistance miss out because they do not meet what the parents consider to be restrictive funding criteria
- that funding levels are inadequate, with some parents personally funding assistance due to gaps in the system
- that parents have little understanding of how funding is spent, due to gaps in communication with the school.

A high number of educators responding to the survey commented on funding arrangements, particularly when asked about reasons why adjustments were not provided. This was one of the reasons most frequently cited for why students are not always provided with the adjustments they need. Educator survey respondents also highlighted the delays associated with seeking funding or problems with the funding criteria.

In addition, educators noted that many students who are not eligible for PSD funding, due to the nature of their disability, still need adjustments and support. As such, they are vulnerable to falling through the cracks.

Funding is discussed in detail in Chapter 14.

Additional barriers for Indigenous students

The Victorian Aboriginal Disability Network critical friends group discussed a number of issues that can negatively impact on the participation of Indigenous students with disabilities in school life. 'Have a say' day participants raised similar issues, including:

- a lack of cultural safety, intensifying feelings of isolation for Indigenous students with disabilities

- students being excluded from holiday programs, swimming carnivals and leadership programs
- labelling of students with disabilities
- students being excluded from school outside the limited hours they are funded for integration aide support¹⁸⁶
- enrolment being made dependent on receiving funding.¹⁸⁷

One Indigenous student said:

Most teachers are helpful but I get confused and can't understand them. Class sizes are too big. Teachers have too many roles and not enough time.¹⁸⁸

Both the critical friends group and 'have a say' day participants raised issues that were not reflected in the general survey results. These issues, described below, relate specifically to the experiences of Indigenous students and their families.

Diagnosis and definitions of disability

'Have a say' day participants described a problem both of under- and over-diagnosis of disability in Indigenous children. See Chapter 3: Enrolment, Identification of disability for discussion of this issue.

Cultural support

The Commission notes that the *Wannik Education Strategy* is reforming the Indigenous workforce in the Department of Education and Early Childhood Development (DEECD) by:

employing more Koori support staff, and integrating the Koori support workforce with regional support staff and functions linked to the Department's broader early childhood and school improvement strategy, including the coordination of developing Koori education plans and pathway plans for students.

Redesigning the roles and responsibilities of the Koori support workforce to ensure high level support for individual Koori students and families, with a particular focus on school-family.¹⁸⁹

¹⁸⁵ Parent survey participants.

¹⁸⁶ This is discussed in Chapter 9.

¹⁸⁷ HASD 11, see also Victorian Aboriginal Disability Network critical friends group.

¹⁸⁸ Student survey participant.

¹⁸⁹ State of Victoria, Department of Education and Early Childhood Development, *About Wannik – what we propose to do* (24 March 2010) <<http://www.education.vic.gov.au/about/directions/wannik/whatwepropose.htm>> at 24 July 2012.

We understand that by January 2013 the transition of Koori education support officers (KESOs) to new roles will be complete, with the workforce increased from 56 to 118 positions across the state. This includes a transition of KESOs to higher grades in the public service and the creation of additional positions as Koori education coordinators in each region.

The critical friends group was concerned about this shift. Specifically members were concerned that these staff no longer work inside schools but have a new role assisting the school to engage with families. They were concerned that this meant there were no people with cultural understanding to support students directly in schools.¹⁹⁰

Some 'have a say' day participants also raised issues surrounding the changing role of KESOs. One participant expressed concern that teachers did not listen to KESOs:

Teachers think, who are they [the KESOs] to tell us about children? They are not given the chance to give cultural expertise.¹⁹¹

I have seen some KESOs used as gofers, not as experts¹⁹²

These participants also described situations where Indigenous students with disabilities were attending Catholic or specialist schools after being expelled from government mainstream schools. These students did not have access to KESOs or culturally inclusive curriculum in their new school. They felt that created a choice between meeting the student's disability needs and meeting their cultural needs. Conversely, one participant described a positive experience at her local Catholic school, where disability and cultural support was provided by a Koori educator and local volunteers.¹⁹³

One parent expressed her concern about the inability to meet her child's cultural or disability needs:

[The] inability of staff to recognise the needs of Asperger's syndrome children. [The] inability of [the] school to equip teachers or support staff. Inability of all concerned to understand the cultural needs of my child.¹⁹⁴

She stated that this led to her child being suspended.

Parent engagement with schools

Both the 'have a say' day participants and the critical friends group described barriers to parents' engagement with schools. The critical friends group also stated that many Indigenous people do not feel comfortable speaking to school principals.¹⁹⁵

One participant also said that many Indigenous families find it intimidating to talk to teachers:

[It is] connected to institutionalisation, they think they might be dobbed in.¹⁹⁶

Further, one participant shared her experience of student support group meetings:

When I go to SSGs, I meet with the principal, not the teachers. But I want the two teachers in the meeting as well, so they understand the needs of my child in the classroom. If the principal is there, even the teachers get scared.¹⁹⁷

Additional barriers to participation for students from CALD and refugee backgrounds

Language and cultural barriers can also affect parents' ability to access support for their children. The CALD critical friends group noted that many families are unaware of what support is available to assist their children, and that they can face barriers when they try to seek out support. For example, one participant stated that 70 per cent of his clients did not speak English. He voiced a suspicion that schools do not consult with his clients because of language barriers, leading to misunderstandings and complaints. Another participant added that translations do not capture all the information that families need.

In the case studies they provided, the Centre for Multicultural Youth (CMY) described difficulties for parents:

... who may be struggling to understand the mainstream education system, and then need to also understand the special school system and potentially navigate both.¹⁹⁸

190 Victorian Aboriginal Disability Network critical friends group.

191 HASD 11.

192 HASD 11.

193 HASD 11.

194 Parent survey participant.

195 Victorian Aboriginal Disability Network critical friends group.

196 HASD 11.

197 HASD 11.

198 Case study 39.

Speech Pathology Australia said:

... it is important that recognition also be given to the challenges facing children from linguistically diverse backgrounds, and that the 'Educational Goals for Young Australians' recognise the extremely important role that maintenance of a first language plays in long-term educational outcomes.¹⁹⁹

A CMY staff member spoke about CALD students with intellectual disability and the struggle they have to communicate, particularly in English. They gave the example:

... of students in a homework club, struggling to switch between the language they speak at home, and the English that they have to speak at school and at homework clubs.²⁰⁰

The CALD critical friends group did note that some communities might not regard mild intellectual disability as 'disability'. They also noted that this could reflect a fear of stigma, as well as resistance to categorisation.²⁰¹ This may mean that families are reluctant to seek or accept assistance for their child at school. For example, CMY provided a case study of a CALD student with intellectual disability who was eligible for PSD funding but received no aide time or curriculum modifications at school:

[The caseworker] organised a meeting with the teacher, the integration aide, himself and the young man's mother. Originally from a small village on the other side of the world, the mother – who could also not read or write – did not grasp the concept of intellectual disability, not of her son being labelled as having an ID. She thus did not care whether her son had an integration aide or modified curriculum.²⁰²

CMY staff also raised concerns about the diagnosis of disability in the context of language and cultural barriers, for example in relation to IQ testing without an interpreter (when the student is still learning English). One CMY staff member also questioned the accuracy of IQ tests when an interpreter is used.²⁰³

Additional barriers for rural and regional students

When you live in a small town, you have little choice where you send your child to school.²⁰⁴

A number of survey responses indicated that students in regional areas face specific issues affecting their participation at school. These often relate to a lack of specialist support services, such as speech therapists, and even the choice of school. Educators participating in 'have a say' days also spoke about lack of access to expertise to learn and understand more about particular disabilities.

Regional participants reported that adjustments to facilities at school had been delayed, overlooked, or not properly made. A therapist gave an example of a student still waiting for modifications at their school to be completed 12 months after the school had approved them.²⁰⁵ Other examples included schools not having facilities for children in wheelchairs.²⁰⁶

Parents and educators participating in the 'have a say' days spoke in particular of the lack of access to support services in rural and regional areas. This is discussed further in Chapter 6.

Consequences of not making adjustments

The combined impact of the factors listed above means that many students with disabilities are not genuinely participating in their school community. A number of parents stressed that they send their child to school to learn and that it is not enough for them to simply be 'managed' or kept quiet and happy. As one parent of a student in a mainstream government school said:

She is failing with a smile on her face and no one is noticing.²⁰⁷

199 Submission 11, Speech Pathology Australia 3.

200 Case study 39.

201 CALD critical friends group.

202 Case study 39.

203 Case study 39.

204 Parent of student attending a Catholic school. Parent survey participant.

205 Case study 18.

206 HASD 2.

207 Parent survey participant.

Parents described a range of impacts that result from not ensuring the participation of students with disabilities, including:

- inappropriate expectations being placed on students and their family due to lack of insight into disability and its effect on their learning
- students experiencing learning delays, anxiety and self-esteem issues due to misunderstanding
- students becoming 'school refusers' due to anxiety associated with going to school
- children having to be withdrawn from school and educated from home, or otherwise having to change the nature and frequency of their enrolment.²⁰⁸

Educators were acutely aware of these consequences and in particular the lost opportunities for students and the school when a child with disability is unable to reach their potential:

When I see students who I believe should receive funding for extra support get knocked back, it breaks my heart that these students will more than likely never reach their full potential. We as a school provide as much support as possible to unfunded students but we are stretched beyond our limits ... many aides and teachers work through lunchtimes ... so we can give these students the best we can. I have seen the difference we make. But we need help!²⁰⁹

There are profound consequences when students with disabilities are unable to participate in education on the same basis as students without disability – for the child, the family, the school and for the community. A person's life chances, employment options, future earnings and value in society are largely determined by their education. Failing to ensure the participation of students with disabilities in education, and to maximise their learning outcomes, is not only discriminatory and unfair, it is also life-changing.

Opportunities for improvement

There was significant agreement between educators and parents about what is needed to improve the participation of students with disabilities.

Responses from parents in the survey included:

- the importance of educators focusing on the needs of individual students and adjusting their methods accordingly

- the need for support in and out of the classroom (e.g. sporting activities, playground, camps, excursions)
- schools being more aware of services available through the Department of Education and Early Childhood Development (DEECD), such as visiting teachers and the various professional development programs on offer
- the importance of leadership in schools to ensure teachers have the capacity and understanding to help students participate
- the need for strong communication between parents and teachers in supporting participation, including in relation to the use of funding and individual learning plans
- more continuity and better transition when it comes to identifying the needs of the child (e.g. changing teachers or aides, identification of needs after transition across year levels or a different school or level of schooling).

The CALD critical friends group made a number of suggestions for improvements, including:

- training for teachers about CALD communities in their area
- developing a communication plan in schools involving parents and teachers that explains how schools will communicate with CALD families.

Parents in the survey also made suggestions about improving the participation of students with specific disabilities. These included:

- staff training in relation to a range of disabilities, including vision impairment, cerebral palsy, autism spectrum disorder, epilepsy, dyslexia and auditory processing deficits
- extra student support, including reading recovery and speech therapists
- information for staff as well as other parents about disabilities, particularly those that some may be fearful of, such as epilepsy
- supply of physical adjustments, including appropriate lifting aids, wheelchair accessible transport, and greater acceptance and carrying out slight modifications for activities at school
- greater use of creative learning methods and presentation formats, including use of technology such as tablet computers where available, being allowed to type instead of handwrite more often, and less use of worksheets
- greater availability of Auslan interpreters for deaf students, acoustically fitted-out classrooms and greater deaf awareness among staff.

²⁰⁸ Parent survey participants.

²⁰⁹ Integration aide, government mainstream school. Educator survey participant.

The educator survey asked for examples of best practice approaches to supporting students with disabilities. Responses included comments about attitudes, priorities and cultural change, especially the importance of seeing the child before seeing the disability, and treating all students with equality and integrity.

Best practice approaches identified by educators included:

- adopting an evidence-based approach to working with students with various forms of disability
- professional development and training for teachers to address students' needs
- greater availability of specific learning resources, adjustments and aids, visual cues and timetables
- smaller class sizes and more aide support in classrooms.

Specific suggestions were also made regarding facilitating the participation of students with vision impairments.²¹⁰

Another educator suggested that schools should employ advocates for children's learning:

Every school should employ a trained psychologist, counsellor or chaplain who understands development and disability to spend time in every classroom, to see how every child learns, understand the family environment and so on. They would be an advocate for children's learning, observing how aides and teachers, and principals work together to build inclusion. They would be different to an 'inclusion coordinator' who may be caught up in funding issues etc. The DEECD needs an 'inclusion and wellbeing leader' and a dedicated team of people to drive reform.²¹¹

These are all very practical suggestions for how the educational experiences of students with disabilities can improve and how schools can achieve compliance with anti-discrimination law. However, there is also the issue of how the community, parents and government can measure how well students with disabilities are faring, and whether existing and future efforts to promote participation actually work.

²¹⁰ Case study 1. This visiting teacher reported: 'the Texas School for the Blind ... has become an international centre of knowledge. They have day programs, both short and long-term. They have satellite schools where students are placed into mainstream classes and more fully integrated settings with support staff. They also support students in their local schools. They offer professional development for staff, are a hub for research, have excellent online resources and are always at the forefront of the field'.

²¹¹ HASD 9.

Currently, there is no system-wide means for determining the educational outcomes of students with disabilities – this data simply does not exist. Instead, all the information is held at a school level, usually in the student's individual learning plan, where these are in place.

One way to gather better information about the educational outcomes of all students, including those with disabilities, is to use a data tool called a unique student identifier. The Victorian government has already developed such a tool (the Victorian Student Number). However, this currently only provides information about where students are in the system. For example, it tracks which school a student attends and retention rates. It does not measure or report on educational outcomes for students.²¹²

If the Victorian Student Number was enhanced to provide information about the participation and learning achievements of students with disabilities, it would, for the first time allow the DEECD and the community to know if the investments and techniques currently underway in Victorian schools to improve the participation of students with disabilities are actually working.

The Commission also believes that a simple way to measure the participation of students with disabilities and to monitor compliance with legal obligations is to ask parents, students and teachers about their experiences. This research is one example of this approach. It would be most welcome if the DEECD and other education authorities established a proactive program of consultations across the state to build on this.

Recommendations

3. Mindful of the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that, as a matter of urgency, the Victorian Student Number is enhanced to enable the measurement of educational outcomes of students with disabilities in government schools.
4. Education authorities hold an annual round of parent and student feedback forums across Victoria to gather feedback on participation of students with disabilities in schools, and that this feedback is publicly reported along with actions to respond to the feedback.

²¹² <http://vcaa.vic.edu.au/schooladmin/vsn/overview.html> at 9 August 2012.

Chapter 5: Curriculum development, accreditation and delivery

Standards for curriculum development, accreditation and delivery

The right

Students with disabilities have the right to participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs, on the same basis as students without disability.²¹³

Requirements to meet the standard

Under the law, education providers are required to:

- take reasonable steps to ensure that courses and programs are designed in such a way that any student with disability is able to participate in the learning experiences of the course, without experiencing discrimination. This includes assessments for the course
- consult with students or their parents or carers about the effect of the disability on the student's ability to participate in learning experiences of school subjects, including assessment
- in light of that consultation, consider and make any reasonable adjustments to curriculum and assessments that are necessary, unless making such adjustments would impose an unjustifiable hardship
- repeat the process of considering and making reasonable adjustments over time so as to allow for the changing needs of the student.²¹⁴

Measures to comply

Measures a school may implement to meet the standard include:

- making sure the curriculum, teaching materials and assessment of school subjects are accessible to the student and appropriate to the student's needs
- ensuring that activities take into account the learning capacities and intended educational outcomes for the student
- making materials available in a format that is appropriate for the student, including using a format that the student is able to read (e.g. large print or Braille), using appropriate communication devices and using the language of the child (e.g. Auslan)
- ensuring that the student is not disadvantaged by the time taken to convert materials into an accessible format
- adjusting teaching strategies to meet the learning needs of the student and ensuring that any disadvantage in the student's learning resulting for the disability is addressed
- ensuring non-classroom activities, such as field trips and work experience, are designed to include the student
- adapting assessment procedures and methodologies so that the student can be tested to measure what he or she has learned. This can include access to portable computers and extra time to undergo assessments, tests and examinations.²¹⁵
- The Standards do not mandate the nature of the adjustments, as these must be determined for each child. However, schools must adjust what is taught, how it is taught and how learning is tested, so that the student can understand and access the learning material.

²¹³ *Disability Standards for Education 2005* (Cth) s 6.1 notes.

²¹⁴ *Disability Standards for Education 2005* (Cth) s 6.2. See above n 42 for an explanation of unjustifiable hardship.

²¹⁵ Measures to comply are contained in section 6.3 of the *Disability Standards for Education 2005* (Cth). See also Australian Government, 'Review of Disability Standards 2005 Discussion Paper', above n 47, 14.

Main findings

- In schools where teaching methods and learning materials are adapted to the individual needs of students with disabilities, students are more likely to enjoy better outcomes. However, performance across Victoria's education system is patchy.
- Students with disabilities may find that adjustments are made in the classroom but not for all aspects of schooling. As a result, they are denied equal access to experiences that other students take for granted, including excursions, school camps and other extracurricular activities.
- Making adjustments for exams and assessment is inconsistent between schools. In some schools, adjustments are not even considered. In others, the environment for testing or limitations in available supports can lead students to perform well below their potential.
- Parents expressed concerns about the level of adjustments that are available to meet the needs of students with disabilities, especially during Victorian Certificate of Education (VCE) examinations, and the arduous process needed to apply for adjustments.

Adjusting teaching methods and learning materials

We don't expect him to be a Rhodes Scholar; however, we expect him to be given the opportunity to reach his full potential.²¹⁶

Students told the Commission about the ways in which teaching strategies are adapted to meet needs arising from their disability. Twenty-six out of 60 students in the survey reported learning programs that have been developed to suit their needs. However, not all students had positive experiences:

Some teachers are great but some others aren't. For example I can only write for very short periods of time so we requested if I could take notes on a laptop or have notes printed off for me so I could highlight the important parts and write down smaller bits of information. Some teachers were great and more than helpful, however others stated that they thought it promoted 'laziness'.²¹⁷

²¹⁶ Parent survey participant.

²¹⁷ Student, Catholic mainstream school. Student survey participant.

I have dyslexia and find it difficult to read, write and organise ideas. Sometimes I don't get the extra time I need to understand the class or just even write down the notes.²¹⁸

[I would like] extra time for homework and assessments like SACS and exams, notes before the class, advice on what to read, as I can't get through everything. Less noise in the classroom [and] answering my questions instead of saying 'I just told you'.²¹⁹

Some students identified help with homework as an important need:

I keep falling behind with work and I don't have an aide at home to do my homework. I need an aide at school so obviously I need one at home.²²⁰

[The extra help I need is] funding for technology at home. Help at home to do my homework, being independent.²²¹

Educators and parents stressed the importance of adjusting teaching methods and the need for flexibility and creativity:²²²

In grade 2, we had a great teacher, and everything was in place for my child. She organised a voice-activated laptop. She had visual cues each day on his desk of how the day was going to run ... she found special pencils that he could hold...²²³

The adjustments my child needs are in most cases very simple and have little or no cost.²²⁴

While learning outcomes and curriculum-based goals were identified as important, a number of participants suggested that educators could be inflexible in their approach, focusing only on meeting curriculum objectives and not considering broader learning needs:

²¹⁸ Student survey participant.

²¹⁹ Student, Independent school. Student survey participant.

²²⁰ Student, Independent school. Student survey participant.

²²¹ Student, government mainstream school. Student survey participant.

²²² See e.g. Manor Lakes College, which incorporates a support centre model where students with disabilities access a range of programs including physical education, art, library and performing arts. Two specialist classes have been combined with other mainstream classes. The school also promotes functional academic and independent living skills programs. Each student has an Individual Education Plan that influences the assessment and reporting of the student, which in turn leads to the modification to all curriculum areas. <<http://www.manorlakesp12.vic.edu.au/College-Staff/Support-Centre1.aspx>? at 11 July 2012.

²²³ HASD 2.

²²⁴ Parent survey participant.

A 'command and control' style approach saw an increasing number of episodes of serious distress ... they seemed to approach their job as to complete his work rather than support his social and behavioural integration into the class routine.²²⁵

Teachers need to focus more on teaching students and not subjects.²²⁶

A number of parents gave examples of inflexible teaching methods regarding requirements to complete written work by hand. One parent of a child with Asperger's syndrome and dyslexia gave the example of their child preferring to type their work. For this parent, building up their child's confidence by being more flexible about the need to write by hand was an important step in helping them participate.²²⁷ Other parents expressed their frustration with an education system that they consider rewards merit and not effort.

Speech Pathology Australia reported that the worst discrimination occurs for students who have a severe speech disorder. They argue that these complex disorders are not well understood by other health professionals as well as teachers 'who continue to teach the curriculum in the same way not allowing for the need to use a variety of methods and strategies so that these students can also access the curriculum'.²²⁸

A number of parents of children with autism spectrum disorder spoke about small changes in teaching styles, including use of eye contact and positioning of the child in the room to avoid distractions and overstimulation:

Most autism management strategies are merely simple good housekeeping ones, with some sensory processing tools thrown in.²²⁹

Educators, however, identified that adjustments are often made in ways that are not necessarily measurable, such as interacting in different ways with students, explaining things, and providing individual attention and support after class.²³⁰

225 Parent of student attending a government mainstream school. Parent survey participant.

226 Specialist support provider, Independent school. Educator survey participant.

227 Parent survey participant.

228 Submission 11, Speech Pathology Australia 5.

229 Parent of student who is now home-schooled. Parent survey participant.

230 Educator survey participant.

Some parents also stressed that even minor changes in teaching style can greatly assist students:

With some relatively simple adjustments in teaching style, and a better appreciation of his particular problems, he should have been able to achieve better academic results.²³¹

Another parent spoke about the importance of building confidence in students to communicate more confidently with teachers about their disability and the help they need:

For the first time ever he finished his work first because he had the confidence to tell [his teacher] that he has some learning issues and could she explain again ... his first 'win' and he is 10 years old ... it doesn't take much.²³²

Building on existing curriculum resources to have more impact

The Commission notes and commends the development and implementation of the Abilities Based Learning and Education Support (ABLES) curriculum and teaching resource by the Department of Education and Early Childhood Development (DEECD).²³³

ABLES includes an online tool for assessing the learning needs of students with disabilities and links this to the development of an individual learning plan for the student, to be developed in partnership with the student support group.²³⁴ ABLES can also be used to monitor the student's progress and to generate specific teaching and learning strategies for the classroom.

231 Parent of student attending a government mainstream school. Parent survey participant.

232 Parent of student attending a government mainstream school. Parent survey participant.

233 This was developed over three years in partnership with the University of Melbourne. State of Victoria, Department of Education and Early Childhood Development, *Abilities Based Learning and Education Support: an introductory guide for Victorian Government schools* (2011) 6. See < <http://www.education.vic.gov.au/healthwellbeing/wellbeing/ables.htm> > 9 July 2012.

234 ABLES is used to identify where a student is working at a level equivalent to the Victorian Essential Learning Standards (VELS) and to plan an appropriate curriculum for that student. If the student is at VELS level one or above, then the teacher can use the VELS to provide a curriculum that is appropriate. For those students who are working at a level that is below level 1 of the VELS, the teacher would use Towards Level 1 of the VELS to access appropriate curriculum advice. Ibid 12.

The Commission notes that the DEECD implementation plan for the *More Support for Students with Disabilities* initiative includes utilising Commonwealth funding for further teacher training around the use of ABLES in schools.²³⁵ This is a welcome initiative.

The value of ABLES is that it makes it easier for teachers to develop an individualised curriculum, regardless of where the student may currently sit on the learning spectrum. It is a comprehensive tool to support teachers working with students who may or may not be eligible for funding under the Program for Students with Disabilities (PSD); however, it is largely applicable to students with intellectual disabilities.

Potentially this model of individualised assessment of curriculum and teaching strategies, with clear links to an individual learning plan, might also be developed for other forms of disability so that student progress against the Victorian Essential Learning Standards (VELS) is more transparent and targeted to the needs of the individual student.

Ensuring adjustments are made for the whole curriculum

We did not even realise there was a camp. As I was walking him into school, all the other children were walking to the bus chatting happily with their bags. My child's head went down, and he informed me it was his grade and they were all heading off to camp.²³⁶

Parents and students spoke about the importance of ensuring that students with disabilities can participate in all parts of the curriculum. They identified barriers in a range of areas:²³⁷

The other area that is not existent for my son is before and after school care as well as holiday programs. These are services that are an extension of the mainstream school system but do not exist in specialist schools.²³⁸

235 Victoria and Commonwealth, above n 23,14. See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 11.

236 Parent of a student attending a government mainstream school. Parent survey participant.

237 These experiences are consistent with consultation findings of the review of the *Disability Standards for Education 2005*. See Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37,16.

238 Case study 8.

Her school camp is coming up and due to the nature of the camp (hiking in a remote location for several days), the school believes my daughter will not be able to cope. Therefore, they are not allowing her to attend.²³⁹

The PE teacher had decided he couldn't go to swimming class as he would need two aides and swimming class was at a gym that didn't have a person trained to teach people with disabilities ... the first time he went to the pool he wasn't involved in the lesson. He said 'I wish I was with the other kids.'²⁴⁰

Parents also spoke of their children being unable to attend camps and excursions due to transport that was not wheelchair accessible or facilities that were not physically accessible. A number of parents in our survey complained that their child's school required them to agree to accompany the excursion (or stay in a hotel nearby) before their child was allowed to participate.

My child cannot go to camp because the camp doesn't have physical access – this is a DEECD property but it is not DDA [*Disability Discrimination Act 1992*] compliant – they should make all DEECD properties accessible.²⁴¹

The class was going on an interstate bus trip and tried to exclude the child as the child could not travel on the ordinary bus. Inquiries by the local regional office determined that the same bus company had access to a large bus with a wheelchair hoist.²⁴²

With excursions and camps, they start with why he can't attend rather than planning or trying to negotiate what can be put into place so he can attend. The only way he can attend is if I go too.²⁴³

I have epilepsy and severe allergies so school often doesn't want me to attend excursions.²⁴⁴

The Epilepsy Foundation of Victoria suggested that more education be offered to staff to decrease ignorance, however the school declined. They also gave the school some suggestions on how they would be able to take my daughter safely on this trip. The school still said no and we didn't take it any further because she had already missed out on the deadline for the trip.²⁴⁵

239 Phone-in 29.

240 Phone-in 3.

241 HASD 9.

242 Case study 6.

243 Phone-in 28.

244 Student, Catholic school. Student survey participant.

245 Parent of a student attending a mainstream Catholic school. Parent survey participant .

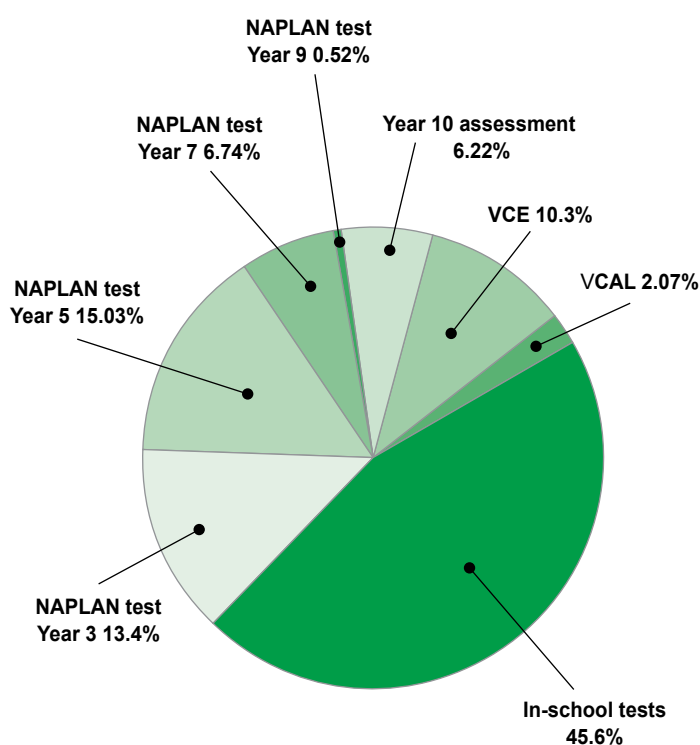
Adjustments for assessments and exams

Twenty-four out of 60 students reported being allowed extra time to complete exams. However, others said that adjustments for assessments were not made:

... I was not allowed to reschedule my last exam and ended up completing it by ticking answers at random because I so desperately needed to lie down.²⁴⁶

Out of the 617 parent participants surveyed, 202 (34.3 per cent) reported that they had requested adjustments to assessments and examinations in the last year.²⁴⁷

Figure 3: Type of assessments where adjustments were requested



The most common requests related to adjustments for in-school testing (45.6 per cent of requests), followed by National Assessment Program Literacy and Numeracy (NAPLAN) testing.²⁴⁸

NAPLAN is an annual assessment for all students in Years 3, 5, 7 and 9.²⁴⁹ However, most of NAPLAN tests where adjustments were requested were in primary school, with a significant reduction in adjustment requests for NAPLAN in Years 7 and 9 among the parents in our survey. This may reflect a smaller number of students with disabilities participating in NAPLAN in high schools, noting that NAPLAN testing is not compulsory as a parent may exempt their child.

The *National Protocols for Test Administration* state:

students with significant intellectual disability and/or those with significant coexisting conditions which severely limit their capacity to participate in the tests may be exempted from sitting the national tests. This is determined after consultation has occurred by the principal and the relevant parent/carer, and the student is not able to access the tests with adjustments.²⁵⁰

If a student is exempt from testing, the protocol requires the principal to obtain the written consent of the student's parents or carers.

Students who qualify for exemption and do not submit a test are considered as assessed students and are counted in the 'below minimum standard' calculations for reporting purposes in national and jurisdictional summary data. Results for exempt students are not included in school-level calculations.²⁵¹

DEECD informed the Commission that in 2011 the participation rates for Years 3, 5 and 7 for Victorian students were between 94.4 per cent and 95.5 per cent. For Year 9, the participation rate was about 91.5 per cent. The Department does not currently have a figure for the overall number of students, or percentage of Victorian students, that were exempt from NAPLAN because of significant intellectual disability and/or co-existing conditions which severely limit their capacity to participate in the tests however this data will be available for 2012 NAPLAN tests.²⁵²

249 <<http://www.nap.edu.au/About/index.html>> at 21 July 2012.

250 State of Victoria, Victorian Curriculum and Assessment Authority, 2012 NAPLAN Handbook for Principals (2012) 8. <<http://www.vcaa.vic.edu.au/preparep10/naplan/schools/2012/handbookprin2012.pdf>> at 9 August 2012.

251 Students with 'significant intellectual disability and/or co-existing conditions with severely limit their capacity to participate in the tests may be exempted'. Ibid 7-8.

252 Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 9 August 2012.

246 Student, government mainstream school. Student survey participant.

247 Parent survey participant.

248 Out of these 202 requests, 193 parents reported the type of request made. Of these 69 were related to NAPLAN.

Are students with disabilities discouraged from taking part in NAPLAN?

While some parents had requested that their child be excluded from NAPLAN, others expressed concerns about:

- cases of students being automatically excluded from NAPLAN testing without parental consent
- alternative strategies for assessment not being explored both for NAPLAN and standard testing
- perceived discrimination of excluding students from NAPLAN in an effort to maximise the school's overall results.²⁵³

Parents report:

My son was not able to sit the NAPLAN test because the school could not afford a trained augmentative communication facilitator.²⁵⁴

I have been asked to withdraw my son from assessments as it 'would cause him distress' to take place, i.e. the NAPLAN testing. My son is excluded to avoid the results from being published.²⁵⁵

I was told to sign off that my child's NAPLAN results not be included amongst the schools results. This was after having to fight for her to actually take the tests. I never received the results after asking several times and was told three different stories about how she went!²⁵⁶

Most parents who bring their child to me for assessments tell me that the school asks them not to bring their child to school when the NAPLAN tests are taking place because it will lower the school's scores. Therefore, as well as the terrible effect on the child's self esteem, the government will have no idea how many children have learning disabilities and actually need support because they are not taking the test.²⁵⁷

Some parents reported a positive experience of NAPLAN testing:

My child participated in both NAPLAN and University of NSW maths exams last year. The school were encouraging of his participation and it gave them great insight into how they can better plan for his learning.²⁵⁸

²⁵³ Parent survey participants. See also Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37,46.

²⁵⁴ Parent of student attending a government mainstream school. Parent survey participant.

²⁵⁵ Parent of student attending a government mainstream school. Parent survey participant.

²⁵⁶ Parent of student attending a government specialist school. Parent survey participant.

²⁵⁷ Dyslexia assessment specialist. Case study 14.

²⁵⁸ Parent of student attending a government mainstream school. Parent survey participant.

However, others did not wish their child to take part in NAPLAN:

The test has absolutely no use for our child and tells the education department nothing about the abilities of our child and how they are developing. It is far too negative and not designed for children with special needs.²⁵⁹

It is disheartening to know that my child doesn't benefit from the experience of testing. It would be great if there were tests that could be administered on a scale that meets her benchmarks.²⁶⁰

Vision Australia also noted that some students choose to opt out of NAPLAN:

Additional time and exam papers being provided in various formats are now standard. What is becoming an issue is the content of the assessment materials. There is a continual trend toward more pictorial and graphic based assessment. These are often complex and very difficult to reproduce in an alternative format. The result is that many students [with vision impairment] are opting out of formal testing such as NAPLAN.²⁶¹

When these students are discouraged from participating in NAPLAN, not only is data on the literacy and numeracy of children who are blind or have low vision not being quantified, it also means 'the required information in which to make informed decisions about their educational outcomes and competencies is missing'.²⁶²

Adjustments for VCE exams

Parents expressed concerns about the level of adjustments that are available to meet the needs of students with disabilities, especially during VCE examinations:

Our son with autism has a problem with adjustments, he was assessed by an OT and had a scribe for exams all through primary school. Now in high school [VCE] he is not allowed to have a scribe. So in exams, he just sits and waits for the exam to finish. The problem is with VCAA.²⁶³

²⁵⁹ Parent of student attending a Catholic school. Parent survey participant.

²⁶⁰ Parent of student attending a government mainstream school. Parent survey participant.

²⁶¹ Submission 9, Vision Australia 7.

²⁶² Submission 9, Vision Australia 7.

²⁶³ HASD 9.

According to the Victorian Curriculum and Assessment Authority (VCAA) guidelines:

Special examination arrangements may be approved to meet the needs of students who disabilities, illnesses or other circumstances that would affect their ability to access the examination.²⁶⁴

In designing these guidelines, the VCAA notes that it is:

... mindful of the need to balance the competing demands of providing students with the opportunity to perform at their optimum with the need to preserve the academic integrity of the assessment process.²⁶⁵

Parents expressed concern about what they felt was a long and arduous application process:

There are special provisions in place for dyslexics, which might allow him to use a keyboard in exams, however the process of applying for them is so difficult, and includes special assessments, IQ tests, reports from physicians and professionals. Because of the unsettling and disruptive effects of this process, we have decided to not seek special provisions in exams. Instead, he will not sit the exams at all, which means of course that he cannot seek an ATAR score. The system is designed in such a way that my son and people like him are systematically excluded from higher education. This is a hideous and obvious discrimination which is institutionally ignored across governments and agencies.²⁶⁶

Applications for Special Examination Arrangements must be made through the school principal and be accompanied by recent supporting medical or other specialist reports. The VCAA will not process an application until all the relevant evidence has been supplied. The Special Examination Arrangement Advisory Panel reserves the right to seek additional information from any of the professionals named in the application.

If an application is declined, there are no grounds for appeal and a new application can only be submitted where there is a new diagnosis or evidence of deterioration in an existing condition.²⁶⁷

264 State of Victoria, Victorian Curriculum and Assessment Authority, *VCE and VCAL Administrative Handbook 2012*, Part C, section 11.4.

265 Ibid.

266 Parent of student attending a Catholic school. Parent survey participant.

267 Victorian Curriculum and Assessment Authority, 'VCE and VCAL Administrative Handbook 2012', above n 264, section 11.4.1.

The VCAA does not automatically adopt a medical or psychological provider's advice or replicate the adjustments the school may have put in place for school-based assessment. In addition, under the rules, the use of a reader or a scribe, if approved by the VCAA, cannot be a person who has a close association with the student.²⁶⁸ This excludes anyone who may have assisted the student previously, other than in VCE examinations, and with whom a strong professional working relationship may have been formed (e.g. between an integration aide or specialist support worker and the student).

Aside from suggesting mistrust of the student and the professionals providing reading or scribing services in exams, this rule imposes additional barriers for students in rural or regional areas who may not have access to a scribe or aide that they do not know.

Are adjustments made when requested?

When asked if the requested adjustment to an assessment or examination was made, of 612 parent survey respondents:

- 48 per cent reported that the adjustment was fully made
- 23 per cent reported it was partially made
- 27 per cent reported that the adjustment was not made.

Some parents were concerned that adjustments for exams were inconsistent or not even considered by some teachers. Others were concerned about the environment for testing or the non-availability of usual supports once their child entered the examination hall:

Assessment adjustment depends on the individual teacher and whether they 'agree' that adjustments are required. Often difficulties arose with staff who still considered his issues to be 'laziness'.²⁶⁹

He works better in a quiet smaller group and the big hall where the exams are held is way too noisy for him. I fear that he will get lower than what he should because he won't be able to concentrate properly.²⁷⁰

268 Ibid section 11.4.3(f).

269 Parent of student attending an Independent school. Parent survey participant.

270 Parent of student attending a government mainstream school. Parent survey participant.

Her school has generally been very good. However, I think she was disadvantaged by the format of the VCE exams. Her English exam was six hours long. She had a reader and a scribe. She experienced equipment failure during her exams. It was very hard for her and exhausting. Before her maths exam the teacher set her calculator to radians not degrees. My daughter could tell she was getting strange results but she did not know what was going on. The reader could tell there was problem but could not say anything to my daughter unless she was specifically asked. In the end, she went through the whole exam getting the answers wrong.²⁷¹

Other parents reported having to investigate themselves what adjustments might be made so that their child could participate in assessments.

When the class teacher sought information, it appeared that there are no standard accommodations for learning disabilities in the NAPLAN tests. It came down to me to do some research into accommodations provided for various tests around the world across all education sectors, university entrance exams, etc. I then provided this information to my daughter's class teacher, and a negotiation followed over what would be allowed for the NAPLAN test. Ultimately she was allowed extra time (up to 15 minutes), a larger print test paper, someone to read questions out to her (except for the reading test), and a scribe if she had wanted it. In the event I don't think all of these things were used.²⁷²

Some parents did not know that adjustments were possible and so had not requested any:

I was under the impression that this was not possible at all. So she has never been through any kind of examination and I too never queried about it.²⁷³

Impacts of not making proper adjustments to curriculum or assessment

Parents vividly described to the Commission the impact of not having proper adjustments made or of making the process of securing adjustments overly onerous. A range of examples were provided, most of which revealed a common pattern where, if students are not provided with support to participate, including adjustments to the curriculum, then they become bored, non-compliant, disengaged or have lowered self-esteem. In the words of one parent:

A child who constantly fails will give up.²⁷⁴

On a positive note, a number of parents told the Commission they had not faced any difficulties in securing adjustments to assessments and that they appreciated the strong support provided by the school. Others noted that the process for putting adjustments in place was easier in specialist schools or in the early years of schooling:

School has been good at letting my son use his laptop whenever needed and allowing a quiet space and aide support for testing, however I am scared that when he reaches higher year levels he may not be able to do exams.²⁷⁵

Opportunities for improvement

A number of practical suggestions were made by parents and students. Much of this focused on up-skilling teachers and schools around disability, and adjustments generally, so that the legal requirements to make reasonable adjustments could be fulfilled, consistent with themes around capacity building, which is discussed in Chapter 15.

271 Case study 37.

272 Parent of student attending a government mainstream school. Parent survey participant.

273 Parent of student attending a government mainstream school. Parent survey participant.

274 Parent survey participant.

275 Parent of student attending a government mainstream school. Parent survey participant.

Some very specific suggestions were also made. These included a stronger emphasis on developing social skills as a core part of the curriculum.²⁷⁶ It was argued that this would benefit all students, not just those with disabilities. A greater emphasis on social skills to promote post-school readiness was another strong theme to emerge.²⁷⁷

Additional guidance for schools on adjustments for NAPLAN testing was suggested to ensure more consistent application of supports and to reduce the burden on parents who feel they are fighting to get their child to participate.

More information for parents and schools around how and when to apply for scribes and readers for exams (especially for VCE) was also mentioned. While visiting teachers are likely to know these systems well, parents and other teachers may not. Similar specialist knowledge and advice for adjustments in assessments for other disabilities would also be most welcome.

While there are a range of views about whether students with disabilities should be exempted from NAPLAN testing, the Commission notes that some parents consider their child's exclusion from NAPLAN as discriminatory.

In the United Kingdom, where similar national testing takes place, a school can only exclude a student from the test if they are working below the level of the tests.²⁷⁸ The school must still register these students for the test and submit teacher assessments of each student. These exclusions are included in the school's results.²⁷⁹

276 See e.g. HASD 9.

277 Some educators reported structured life skills programs for students such as cooking, gardening, shopping, experiences with money, looking at what skills are more important for life outside school. See e.g. HASD 8. The Commission notes that the New South Wales secondary curriculum includes alternative outcomes for students with disabilities who are unable to meet the universal curriculum outcomes even with adjustments. These are called 'life skills' courses and are included in the curriculum for English, Mathematics, Science, Australian Geography, Australian History and Personal Development Health and Physical Education. The General Purpose Standing Committee inquiry into students with disabilities reported that 'the inclusion of Life Skills courses as part of the curriculum at secondary level was widely supported by inquiry participants'. General Purpose Standing Committee no. 2, Parliament of New South Wales, *The provision of education to students with a disability or special needs*, Report 34 (2010) 139–140.

278 If a student with disability is working at the level of the tests, the school must consider and arrange adjustments for the student to sit the test: Standards and Testing Agency, *Curriculum Assessments: Assessment and Reporting Arrangements – Stage 2* (2011) 20. <www.education.gov.uk/schools/teachingandlearning/assessment/a00197251/assessment-and-reporting-arrangements> at 2 August 2012.

279 Ibid 17.

According to one participant who had taught in the United Kingdom, this created an incentive for teachers to establish adjustments where these could be made, and as a result, '...a lot more effort was made by teachers to improve the achievements of each child'.²⁸⁰

Recommendations

Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and Victorian Auditor-General's audit of programs for students with special learning needs, that:

5. Building on existing efforts and consistent with the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that the breadth and depth of curriculum and practice materials available to teachers to educate students with a range of disabilities be enhanced. Further, that monitoring be undertaken by education authorities to make sure these are reflected in teaching practice.
6. All Victorian schools conduct regular audits of venues used for school camps and other educational activities to ensure they are accessible to students with a wide range of disabilities, including intellectual, sensory and other disabilities.
7. The Victorian Curriculum and Assessment Authority establish a working group with the Department of Education and Early Childhood to formulate a simpler process for seeking and making adjustments for students with disability in Victorian Certificate of Education examinations. That this working party address inconsistencies in adjustments between in-school and Victorian Certificate of Education examinations; and remove any existing anomalies that may give rise to discrimination. This working group should include experts from various fields of disability, including augmented communication and use of technological advances to facilitate access.
8. Mindful of the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that data collected by the Department of Education and Early Childhood Development on the number and proportion of students with disabilities eligible for NAPLAN testing who are absented from testing be published in the department's annual report.

280 Case study 14. This case study also identified that in the United Kingdom schools can work towards a 'dyslexia mark' by becoming dyslexia friendly.

Chapter 6: Student support services

Standards for student support services

The right

Students with disabilities have the right to support services provided to all students, for example student welfare services and careers advice.

Students with disabilities also have the right to specialised services that they need to participate in education. This might include personal or medical support at school, therapists or other specialist expertise or personal educational support, such as an integration aide, without which some students with disabilities would not be able to access education.²⁸¹

Requirements to meet the standard

Under the law, schools and educational authorities that administer schools, such as the Department of Education and Early Childhood Development (DEECD) and the Catholic Education Office at a diocese level, are required to:

- take reasonable steps to ensure that the student with disability is able to use support services used by students of the school generally without experiencing discrimination
- take reasonable steps to provide, or arrange for another person or agency to provide, access to the specialist support services necessary for the student with disability to participate in the educational activities for which the student has enrolled at the school
- consult with the student or their parents or carers about the provision of the support either by the school or another provider
- in light of that consultation, consider and make any reasonable adjustments that are necessary, unless making such an adjustment would impose an ‘unjustifiable hardship’
- repeat this process of consultation and make reasonable adjustments, including through access to specialised support services, to allow for the changing needs of the student.²⁸²

Measures to comply

Measures a school may implement include:

- making sure educators are aware of what specialised support services are available and that students have information that enables them to access these services
- providing, either directly or through collaborative arrangements with service providers, supports such as speech therapists, occupational therapists, physiotherapists and personal or attendant care
- making sure necessary equipment is provided to the student, including communication devices and adaptive technology
- ensuring appropriately trained support staff, such as integration aides or teacher support staff, AUSLAN interpreters and note takers, are made available to the student.²⁸³

²⁸¹ *Disability Standards for Education 2005* (Cth) s 7.1 notes.

²⁸² *Disability Standards for Education 2005* (Cth) s 7.2. See above n 42 for an explanation of unjustifiable hardship.

²⁸³ *Disability Standards for Education 2005* (Cth) s 7.2.

Main findings

- Despite considerable investment by the Victorian Government, there continues to be significant unmet need for support services for students with disabilities, including integration aides, occupational therapists, speech therapists, other specialist staff and assistive technology. If these are not provided when required, students with disabilities cannot participate effectively in education.
- Students in regional areas encounter distinct issues that affect their ability to participate at school, which commonly relate to a lack of these specialist supports.
- Despite being contrary to government policy and legislation, some parents are contributing financially to the provision of specialist supports in schools to address gaps in the system and ensure that their child can remain at school.

Experiences of parents, students and educators

My son has what is termed high medical needs and a severe level of disability. He is totally PEG fed, requires regular suction, is ventilated at night time and uses an electric wheelchair ... He receives the most amazing education and all of his medical needs are taken care of when at school.²⁸⁴

In Chapter 4, we reported that the most common requests for adjustments from parents in the survey were for specialist staff such as physiotherapists, occupational or speech therapists, and for education support staff (integration aides). This pattern was the same for parents in the Catholic and government systems. Parents of students with disabilities in Independent schools were likely to request therapists, education support staff and behaviour support in equal measure.²⁸⁵

However, across all schools, parents reported that the most frequently made adjustment made was the provision on an integration aide.

²⁸⁴ Case study 8.

²⁸⁵ The response rate from parents from Independent schools to this question was very low and so this data should be treated with caution.

Reliance on integration aides as the primary means of making adjustments

There was a general consensus that schools need to carefully consider how to get the most out of integration aides. Some parents stressed that the role of integration aides needs to be clarified as there can be conflict between teachers and aides about their respective roles and responsibilities.

Participants spoke about occasions where integration aides are used by all students in the classroom. Some parents did not think this was appropriate and saw the aide as their child's support person, not a general classroom resource. Others took the opposite view, suggesting that it was better for the teacher to focus on the student with disability while aides assisted others in the classroom.

Some people felt there was an over-reliance on aide time and that funding would be better spent on other supports. For example, a submission received from Down Syndrome Victoria pointed to evidence of inadvertent detrimental impacts that can result from an over-reliance on one-to-one paraprofessionals and aides, including separation from classmates, unnecessary dependence and limited access to competent instruction.²⁸⁶

Speech Pathology Australia submitted:

There are valuable uses for integration aides in the school setting. However, they are not trained appropriately to be able to work with students with severe speech and language disorders. The best practice model is to have the most highly specialised professionals work with these students.²⁸⁷

Unmet need for integration aides

Even though integration aides appear to be the most frequently made adjustment, many participants reported limited access to this form of support, usually due to lack of funding.

²⁸⁶ 'Historically families and schools have tended to assume that this funding for students with disabilities is intended to fund a teacher's aide for the maximum time possible. However, there is no strong basis for such an allocation of all support funding and indeed with inclusion as our goal there is good reason to allocate funding more judiciously.' Submission 3, Down Syndrome Victoria, supplementary materials. See also Michael F. Giangreco, 'One-to-one paraprofessionals for students with disabilities in inclusive classrooms: Is conventional wisdom wrong?' (2010) 48 *American Association on Intellectual and Developmental Disabilities* 1, 1–13.

²⁸⁷ Submission 11, Speech Pathology Australia 9.

[My child] gets funding for school hours, although not all of them. He gets an aide until 1 pm. This is a bit silly because he doesn't stop having autism at 1 pm.²⁸⁸

Other points relating to gaps in the provision of integration aides made by parents included:

- that many students with disabilities would benefit from having access to an aide in a range of areas in addition to the classroom, such as in the playground, on excursions and at sport; some parents reported their child has to be taken home early because no alternative activity to sport is offered
- changes to aide time without consultation or that integration aides are not replaced when absent
- having to keep their child at home when an aide is unavailable, leading to part-time attendance at school.²⁸⁹

The Victorian Aboriginal Disability Network and other community members described limitations in integration aide services. They were concerned that in their experience there are no Indigenous integration aides:

Employ someone specifically for Indigenous children with disability in schools to provide one-on-one support. That person must be trained; they need cultural knowledge plus knowledge of disability.²⁹⁰

They also noted that funding for aides did not extend to participation in National Aborigines and Islanders Day Observance Committee (NAIDOC) week celebrations. This meant that children with disabilities missed out on important cultural events.²⁹¹

Unmet need for specialist supports

Specialist therapists ranked highest in terms of demand for adjustments and were likely to be provided either in full or part at the same rate as integration aides.²⁹²

In both cases, adjustments were fully made in one in three cases, while a much higher proportion of adjustments were partially provided (60 per cent). This suggests there is a substantial unmet need, despite significant existing resources being deployed by the DEECD through Student Support Services.

Problems accessing specialists

It is clear that access to appropriate, timely and individualised therapies makes a considerable difference for students with disabilities who need this support. Yet, despite significant investment, the Commission found that lack of access to specialist supports remains a problem:

I was told that the school speech therapist was busy with other students and that my son had great speech needs and that he should see a private speech therapist. No OT has been accessed by the school for my son ... I requested that the teacher be supported by receiving professional development this was denied despite the enthusiasm of the teacher.²⁹³

My son attended primary school at a government school with a specialist deaf facility attached and integrated. Despite Auslan being his first language, having a significant speech delay and language disorder, he did not have access to a fluent/qualified Auslan interpreter during his primary school years. He also had insufficient access to speech pathology services. I believe it had an impact on his language learning and acquisition. This has affected his reading and speaking progress.²⁹⁴

Students told similar stories:

Some teachers of the deaf are awesome, but some schools treat it like an add-on.²⁹⁵

A number of parents indicated they had engaged external professionals to supplement the child's learning, relying on a combination of what the school provides and what they provided themselves:

The school has tried its best to get the relevant specialists for my daughter. We too have paid for some specialist input as we are conscious of the high expenses (in spite of my daughter receiving level 4 funding) for the school. However, with the increase in expenses for these specialist services, the school has stopped some of these services being provided for her.²⁹⁶

288 Phone-in 15.

289 This is discussed in Chapter 9.

290 HASD 11.

291 Victorian Aboriginal Disability Network critical friends group.

292 See Figure 2, page 38.

293 Parent of a student attending a government mainstream school. Parent survey participant.

294 Parent of a child attending a government specialist school. Parent survey participant.

295 HASD 15.

296 Parent of a student attending a government mainstream school. Parent survey participant.

Lack of access to specialist services was a very strong theme in submissions provided to the Commission, including those from peak bodies representing allied health professionals.²⁹⁷ These submissions outlined the value of these specialist interventions and made suggestions as to how provision could be enhanced in classrooms across the state.

Speech Pathology Australia noted that across primary and secondary school years, communication disorders affect as many as 13 per cent of Australian children.²⁹⁸ They further noted that:

... students with speech and language disorders are disadvantaged from the start as they cannot access the curriculum in ways that other children do ... the importance of oral language to the development of literacy cannot be overemphasised.²⁹⁹

The organisation made the strong case that students with severe speech and/or language disorders can access the curriculum if best practice teaching strategies and support in the classroom is applied and speech pathology services are provided. It reported it had repeatedly expressed concern to the DEECD that access to speech pathology services in the Victorian school system is at the discretion of the school principal, resulting in 'significant inequity' in service provision across the state.³⁰⁰ They also submitted that the absence of specific guidelines and role descriptions for student support officers leads to individual therapists having to advocate for services for students to school principals, where speech pathology services are either not available or funds are used elsewhere, for example for an integration aide.³⁰¹

Occupational Therapy Australia reported that the employment of occupational therapists in mainstream schools is inconsistent between the states, with Victoria employing these therapists only in specialised educational settings.³⁰² As noted in its submission:

297 See e.g. submissions 3, 5, 7, 9 and 11.

298 McLeod and McKinnon (2007) cited in submission 11, Speech Pathology Australia 4.

299 Submission 11, Speech Pathology Australia 3.

300 Submission 11, Speech Pathology Australia 8.

301 Submission 11, Speech Pathology Australia 8.

302 In other states, mainstream schools employ occupational therapists to provide services to students with autism spectrum disorder, physical, sensory and intellectual disabilities. Submission 5, Occupational Therapy Australia 15.

In some situations, the occupational therapy received at school may be the only access that the students has to a health professional ... Ensuring that all students have equitable access to occupational therapy services through timely, school based interventions will foster the development and inclusion of many students with special needs into mainstream schools.

Occupational therapists in the field made similar comments:

I currently don't see school-aged children in my Community Health role due to the restrictions in our funding, however until four years ago I did. Most community health centres have decided that this is too big a sector to handle and have left it to the Education Department. That means little is done for these children.

This therapist, who also works privately, went on to describe her experience in schools:

When I go to the schools, there is no communication with the teachers or the principal. I simply work with the aides and provide therapy resources and ideas to them. There is no specific room I can use and it is a matter of searching around and helping yourself. Occasionally I am invited to Parent Support Group meetings but this is hit and miss ... No one asks or seems particularly interested in my thoughts/assessments and nothing is followed through unless the aides implement recommendations.³⁰³

Vision Australia also noted the reliance on aides to ensure specialist therapies and adjustments are delivered:

Generally speaking students who are enrolled in local schools are fully included in the curriculum and program. To what extent in practice, often depends on the support and skills of the Educational Support Officer (ESO or Teacher Aide and the Visiting Teacher ... As there is a severe shortage of vision impaired trained teachers in Victoria, there is the potential for students and their schools to have reduced access to experienced staff. One result of this approach has been that potential Braille using students have been discouraged from learning Braille as the teacher supporting them has no background in Braille.³⁰⁴

303 Case study 5.

304 'The teacher may therefore encourage the student and school to adopt an assistive technology approach. Braille is crucial for children and young people learning literacy and numeracy as it is analogous to learning with sight and the intricacies of syntax, grammar and structure are largely absent when using screen reading technologies.' Submission 9, Vision Australia 6. See also case study 1.

In addition to highlighting the lack of access to specialist services, the Disability Discrimination Legal Centre was critical of the consultancy model of specialist supports it claims is used in government schools.

Recently the DEECD changed its philosophy surrounding the provision of these services, which are now provided through a 'consultancy model'. This means that instead of children receiving direct therapy from allied health professionals, those professionals now speak to aides and teachers about what is required and those aides or teachers are expected to provide direct therapy ... Services such as speech therapy, if a therapist does ever work with a child directly are often given in groups. While this may be cost effective, each child may have a different severity and type of language disorder, and therefore does not benefit from the 'one size fits all' model provided.³⁰⁵

Geographic inequities

It is hard to get services if therapists are not available ... it's difficult when living in regional areas because services don't stretch that far. Everyone has to make do.³⁰⁶

A number of survey responses indicated that students in regional areas face distinct issues affecting their participation at school, usually relating to a lack specialist services. Access to specialist services was described as a 'critical work force and community health issue' by Occupational Therapy Australia, which also noted that access was especially problematic in rural and regional areas.

Those students with little or no access to occupational health services within or outside their school environment, are at higher risk of acquiring further learning delays, health issues, having their personal development inhibited by their disability, and ultimately educational success arrested.³⁰⁷

Parents told stories of having to travel to Melbourne to access services, such as speech therapists.³⁰⁸ One mother of three blind students reported driving to Melbourne twice a term to get support from the Statewide Visual Resource Centre, leaving home at 4am.³⁰⁹

Other examples included:

- a parent who said it took half a year for an occupational therapist/physiotherapist to come to their school and assist their child with cerebral palsy.³¹⁰
- multiple parents suggesting that generally speech therapists are very difficult to find in rural and regional areas.
- educators confirming that access to support services, including both speech therapists and psychologists, is much more difficult in regional areas.³¹¹

Cultural barriers to accessing specialist services

'Have a say' day participants described barriers that prevent Indigenous families from accessing services to support their children. They noted that, in a rural town where fewer services are available, it is difficult to access culturally appropriate services.

The Commission also understands there are very few Indigenous specialist support staff employed in the government school sector because of an under-representation of Indigenous people in speech pathology and other relevant professions generally.

One participant said:

It is important for families to feel safe and have programs that are culturally appropriate and disability-aware – it needs to be clear that the family is not at fault for having a child with disability.³¹²

305 Submission 7, Disability Discrimination Legal Service 28.

306 Parent of student attending a government specialist school. Parent survey participant.

307 Submission 5, Occupational Therapy Australia 15.

308 HASD 4.

309 HASD 9.

310 HASD 2.

311 HASD 5.

312 HASD 11.

Current provision of student support services in government schools

In addition to general school support services within the government school system, such as primary welfare officers and student welfare coordinators, DEECD funds a pool of allied health professionals and visiting teachers known as Student Support Service Officers (SSSO).³¹³ The annual budget outlay for the service is around \$65 million.³¹⁴

DEECD estimates approximately one in five students will need to access the Student Support Services program at some stage of their schooling. In 2011, there were 627 full time equivalent SSSOs and 540,000 students in Victorian government schools. This equates to one SSSO per 172 students who are estimated to need access to the program.³¹⁵

Student Support Services operate within schools networks. These are networks of approximately 25 school principals in each area. Services include a broad range of professionals, including psychologists, guidance officers, speech pathologists, social workers and visiting teachers (vision, hearing, physical disability and autism).³¹⁶

³¹³ There are 256 EFT primary welfare officers in 520 government schools at an annual budget of approximately \$21 million. In addition, there are 170 EFT student welfare coordinators across 311 government schools with an annual budget of approximately \$12 million. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 21 November 2012.

³¹⁴ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 21 November 2012.

³¹⁵ Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 12.

³¹⁶ Other interventions beyond Student Support Service include the Medical Intervention Support and Schoolcare Program for students requiring regular, complex medical support at school and equipment grants to enable schools to purchase equipment for students with vision impairments who are not eligible for PSD. The Language Support Program is also intended to support students with disabilities alongside other students with language and communication difficulties. Funding is provided to all state primary and secondary schools under this program. Students do not have to meet specific eligibility criteria and use funds is determined by the school. The annual budget for LSP is in the order of \$30 million per annum. Information provided by Student Wellbeing and Engagement Division, DEECD 21 November 2012.

The role, function, and governance arrangements for Student Support Services are set out in departmental guidelines. These state that:

Student Support Services operate within schools networks with the objectives to:

- work in collaboration with services within the community to identify and intervene early with children and young people who have additional needs or are at risk of disengagement
- develop the capacity of the workforce within schools to meet the needs of children and young people who have additional needs, or are disadvantaged or vulnerable, to enable them to achieve successful education and wellbeing outcomes
- target the delivery of individual support services to those who require specialised expertise, assessment and intervention in order to overcome barriers to learning
- respond to emerging student wellbeing needs and contribute to identified school and network priorities
- respond to critical incidents involving students, staff and school communities
- facilitate and strengthen partnerships between and the Student Support service in schools, early childhood services, community organisations, and health, family, child, mental health and youth services in order to provide greater options and coordinated service provision for children, young people and their families.³¹⁷

³¹⁷ The guidelines provide a starting point for school networks to determine the service delivery model for Student Support Services in their area. Network Executive Groups are able to supplement the guidelines 'by developing their own local operating protocols over time within the context of these guidelines and policy directions established by government'. This provides some discretion to networks to allow for local circumstances. See above n 315.

Recent initiatives to increase access to specialist services

Additional school supports are also being rolled out, using recently announced funding from the Australian Government's *More Support for Students with Disabilities* initiative.³¹⁸

These include autism teacher coaches who provide targeted professional coaching to teachers and staff who support students with disabilities. Based on an initial trial in one region, a statewide two-year trial will commence in 2012.³¹⁹

Autism inclusion support coordinators will also be trialled in 2012 and 2013 in schools with high numbers of students with autism. These specialists will work directly with students and teachers to model teaching practices for students with autism spectrum disorder (ASD).³²⁰

Expert consultation for schools on ASD will also be provided through services provided by Autism Victoria (Amaze). This is one of three support centres funded under the initiative.³²¹

DEECD states that the implementation of autism Inclusion Support Programs in mainstream schools 'represent a key policy direction for provision in Victoria'.³²²

Access to specialist services in Catholic and Independent schools

The Victorian Government provides some funding to Independent and Catholic schools on an annual basis to assist schools to access speech therapists and visiting teachers for students with hearing impairment, vision impairment or physical disability.³²³ Approximately \$6 million is allocated to this funding program each year.³²⁴

Some federal funding is also available for physical and occupational therapy. Due to the limited amount of funding, the grant is capped at \$1,600 per year in 2012 and must be applied for annually by the school.³²⁵ Grants of up to \$30,000 are available to Independent schools for capital works and equipment that provide 'essential access'.³²⁶ It is expected that the school will make a contribution towards the cost of the project.

Unmet need for assistive technologies

Parents, students, educators and professional organisations all reported challenges in securing assistive technology:

When specialist equipment was requested I was told there was not enough funding. So we provided our own iPad and continue to do so.³²⁷

Some items of assistive technology are very expensive and require a school to make difficult choices, reduce aide time to pay for the equipment or apply for a once off discretionary equipment grant. Schools are reluctant to reduce aide time and this results in some students experiencing significant delays for equipment.³²⁸

If all our teachers could have microphones, it would improve participation. It blocks out peripheral noise and anecdotally this reduces behavioural problems in the classroom. We only have one for each campus and it is used for deb balls.³²⁹

318 For a full list of the initiatives being implemented in Victorian government schools see <<http://www.education.vic.gov.au/healthwellbeing/wellbeing/mssd.htm>> at 22 June 2012.

319 'One region in Victoria has been trialling autism coaches for 18 months as a way of strengthening the capacity of schools to support students with autism. Information and responses to the trial have been very positive. Additionally, a metropolitan regional community consultation process with autism stakeholders and parents identified coaches as a preferred strategy for strengthening autism provision.' Victoria and Commonwealth, above n 23, 14. <http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/education.aspx> at 8 July 2012.

320 Above n 318.

321 The other support centres are in partnership with Down Syndrome Victoria and Victorian Deaf Education Institute. Victoria and Commonwealth, above n 23, 8.

322 Ibid 7. <http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/education.aspx> at 8 July 2012.

323 Independent Schools Victoria, *Students with Disabilities Handbook 2013* (2012) 6.

324 Information provided to Commission by Student Wellbeing and Engagement Division, DEECD 9 August 2012.

325 Key informant interview, Independent Schools Victoria.

326 Independent Schools Victoria, above n 323, 25.

327 Parent of student attending a government mainstream school. Parent survey participant.

328 Submission 9 Vision Australia 7.

329 HASD 5.

Assistive technology may be 'low tech', including seating devices, adapted pens or scissors, and gloves or handsplints to allow use of a computer or handheld device, angled writing boards, visual aides, adjustable tables, equipment for sport (such as built up sporting bats or wheelchair accessible basketball hoops) and equipment for art (such as built up brushes). Alternatively it may be 'high tech', including tablet computers, interactive whiteboards, mobile devices and computer software. The device might be owned by the student, the school or the therapist.³³⁰

The Commission notes that both DEECD and the Catholic Education Commission Victoria (CECV) have included the provision of assistive technology and teacher training on its use in their implementation plans for the *More Support for Students with Disabilities* initiative. This is welcome.

The CECV implementation plan states 'Assistive technology will be linked to the individual learning plans of students and these plans will be reviewed on an annual basis through a program support structure'.³³¹ CECV estimates that, by December 2013, 110–120 Catholic schools will have assistive technology provided through this funding, equating to 120–140 pieces of equipment.³³²

The DEECD plan estimates that 56 more schools will have assistive technology in place by December 2013, equating to 256 items of technology.³³³ The plan also includes a trial and evaluation of live deaf captioning in government schools.³³⁴ This will take place over the next two years in partnership with the Statewide Vision Resource Centre.

A deaf captioning trial in partnership with the Victorian Deaf Education Institute will also be rolled out over 2012 and 2013 in both mainstream and specialist schools.

³³⁰ Submission 5, Occupational Therapy Australia 10.

³³¹ Catholic Education Commission Victoria and Commonwealth, above n 17, 5.

³³² Ibid Attachment A.

³³³ Victoria and Commonwealth, above n 23, 17.

³³⁴ Ibid 6.

Parents funding support services themselves

Victorian legislation requires that instruction in the standard curriculum program must be provided free to students in Victorian government schools. Free instruction includes the provision of learning and teaching activities, instructional supports, materials and resources, and administration and facilities associated with the standard curriculum program. The costs associated with the administration and coordination of the standard curriculum program is considered to be part of free instruction and must not be passed onto parents. The legislation provides that a parent of a student with a disability or impairment is not required to contribute to the cost of the provision of additional support for the education of that student.³³⁵

Despite being a clear breach of DEECD policies and Victorian legislation, a small number of parents reported that they have funded support services themselves, often at considerable expense, in order to address gaps in the system. Parents reported paying for a range of critical services, including:

- occupational therapists
- speech therapists
- sensory assessments
- physiotherapy
- counselling³³⁶
- therapy/psychologists for social skills and anxiety management.³³⁷

³³⁵ State of Victoria, Department of Education and Early Childhood Development, *Program for Students with Disability Guidelines 2013* (2012) 20. <www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf> at 31 July 2012. <www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-SSGGuidelines.pdf> at 31 July 2012. See also *Parent Payments in Victorian Government Schools* at <<http://www.education.vic.gov.au/management/governance/spag/management/parentpayments/>> at 22 June 2012.

³³⁶ HASD 7.

³³⁷ E.g. HASD 6 and 7. Similar reports were made to the Victorian Auditor-General. See Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 27-28.

In addition, some parents engaged consultants for organisational and goal-setting purposes and to assist teachers meet educational goals. More than one parent indicated they had sought the assistance of an external autism spectrum disorder consultant to set these goals.

Two parents reported that they had been told by their school that it was DEECD policy that parents are not permitted to top-up PSD funds.³³⁸ However, a more common complaint was that parents had to supplement funding to ensure adequate adjustments were made for their child:

When my son's teacher aide was absent from school I was requested to keep my son at home. I did this on a number of occasions. As I work I was finding this difficult so I asked if I could pay a teacher aide to go in as the school said they could not afford to cover our teacher aide when she was off sick. This happened on a few occasions, I paid half the day's wage for the aide and the school paid the other half. As I am a teacher in a secondary college I didn't think this was correct so I contacted the district office and they informed me this was not correct. They spoke to the school and I was refunded the money and since that time I have not been requested to keep my son at home or pay for an aide when my son is away sick. However, I do not have confidence in how the school manages the situation now when the aide is away.³³⁹

Although scored initially at level five, the Department reduced scores to level four funding. [It was] very clear that this didn't meet our sons needs so we paid around \$10,000 over six months to pay additional hours for an aide.³⁴⁰

Better utilisation of available resources

Responses to our survey suggested that existing resources are not always used, sometimes because teachers and parents do not know they exist. This seems to occur even though the DEECD circulates information about these resources, as well as policy and practice advice indirectly, using the department's intranet, and directly through circulars and emails.³⁴¹

Some parents, as well as some educators, spoke about schools not being receptive to the views of parents or external professionals regarding the best use of available resources and funding to address students' needs.

For example, one parent said:

The majority of staff don't know how to use the existing assistive technology in their school and had an attitude that they have no special needs training ... so they just don't know what to do, so they don't do anything. We had a private health team (funded at our expense) ready to assist the school, but they chose not to use it.³⁴²

Other examples and comments shared with the Commission included:

- a parent providing an intervention program/ visual schedule/pictures on the blackboard that the school did not use.³⁴³
- a parent pushing for a teacher to use a daily schedule for their child, with reluctance from the teacher, who thought this would be too time consuming to use.³⁴⁴
- an educator who suggested that the school make the final decision about how funding will be spent, regardless of the specific needs of students or recommendations provided by parents or visiting teachers.³⁴⁵

Opportunities for improvement

The Commission's research suggests that provision of specialist support services varies across the state; however, there is no published data to confirm or contest this as the distribution of specialist support staff and the provision of these in schools is now managed through networks of schools.

As Speech Pathology Australia noted, the systematic collection of data regarding the level of demand for Student Support Services, along with the number of staff supplying these specialist services in schools, would be an important step forward in enhancing the Victorian school system.³⁴⁶

338 Parent survey participant and case study 30.

339 Parent survey participant.

340 Parent of a student attending a government mainstream school. Parent survey participant.

341 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

342 Parent of a student attending a government mainstream school. Parent survey participant.

343 Parent survey participant.

344 Parent survey participant.

345 Educator survey participant.

346 Submission 11, Speech Pathology Australia 9.

Other suggestions from Speech Pathology Australia included:

- detailed guidelines and role descriptions for Student Support Services Officers
- minimum standards for clinician-to-student ratios to reduce the variability of current provision and promote more equitable access across the state.³⁴⁷

Occupational Therapy Australia made suggestions for creating enabling environments for students with disabilities. At a system level, it recommended minimum standards for visual, acoustic and inclusive design in classrooms. For this to work in practice, schools would need to consult with occupational therapists who are skilled to provide this advice.

Occupational Therapy Australia also recommended the employment of occupational therapists across Victorian government schools, as has been the case in Queensland for many years.³⁴⁸

The creation of an occupational therapy adviser within the DEECD was also suggested. This position would oversee governance of occupational therapy in Victorian schools, as well as establishing service delivery models, including pathways to service delivery; job descriptions for occupational therapists; and the development of accountability frameworks to measure the efficiency of services that are implemented.³⁴⁹

Participants also wanted to see existing resources and supports better utilised, in particular autism coaches and other knowledge holders around specific disabilities:

It is good to have kids with special needs in mainstream school so that the other kids also learn something. There is one disability consultant in the DEECD who has cerebral palsy and goes around the schools to talk to kids. This is really effective.³⁵⁰

Indigenous participants said that a more culturally appropriate range of services should be available in schools, along with a greater presence of Indigenous people, including Indigenous integration aides.³⁵¹

A number of people wanted existing rights to supports to be better articulated, observed and monitored. Others did not know that rights to supports, including interpreters, already existed under the law.

Recommendations

Noting the findings of the Victorian Auditor-General's audit of programs for students with special learning needs, that:

9. The Department of Education and Early Childhood Development publish annually, data on demand and supply of student support officers in each region, and that this baseline data inform workforce planning and improved provision of support to students with disabilities in schools.
10. The Department of Health and the Department of Education and Early Childhood Development work together to consolidate and promote allied health workforce development and planning in regional Victoria, so that current unmet need for specialist support officers in Victorian schools is addressed. This workforce planning should also address the under-representation of Indigenous allied health professionals among student support officers in Victorian schools.

347 'Whilst some flexibility must be maintained, formulae that provide minimum standards for clinician to student ratios would ensure that school based services are optimised.' Submission 11, Speech Pathology Australia 9.

348 Submission 5, Occupational Therapy Australia 4. In Queensland speech-language pathologists are generally based in one school, while providing a service to a number of schools across a local area. See <www.education.qld.gov.au/student-services/learning/disability/specialists/slt/services.html#organisation> at 11 July 2012.

349 Submission 5, Occupational Therapy Australia 4.

350 HASD 4.

351 Victorian Aboriginal Disability Network critical friends group.

Chapter 7: Elimination of harassment and victimisation

Standards for the elimination of harassment and victimisation

The right

Students with disabilities have the right to education in an environment that is free from discrimination caused by harassment or victimisation based on their disabilities.

Harassment includes an action taken in relation to the student's disability that is reasonably likely to humiliate, offend, intimidate or distress the student or their associate, for example their parents or carers.³⁵²

Victimisation occurs when someone has been treated unfairly for complaining or assisting others to complain about an incident of discrimination or harassment.

Associates of the student, such as parents, carers and guardians of a student with disability, are also protected from discrimination, harassment and victimisation.³⁵³ These rights come from a number of different provisions in anti-discrimination law.

Firstly, both the student and the parents have protections against discrimination in education and in service delivery. It is important to note that courts have found that schools can provide services to parents in the course of educating a child.³⁵⁴

Harassment based on disability, or someone's personal association with a person with disability (such as being their parent) is also unlawful. Harassment in education and in goods and services is directly covered under the *Disability Discrimination Act 1992*.³⁵⁵ Harassment can also be a form of unfavourable treatment and amount to discrimination under the *Equal Opportunity Act 2010*.

Secondly, the protections against victimisation under both Acts can apply to anyone. Victimisation does not have to occur in the context of one of the areas of public life covered by discrimination.

Requirements to meet the standard

Under the law, education providers are required to:

- have strategies and programs in place to ensure the environment is free from discrimination,

³⁵² *Disability Standards for Education 2005* (Cth) s 8.1. Harassment is also unlawful under ss 37 and 39 of the *Disability Discrimination Act 1992* (Cth). Section 42 of also makes it an offence to victimise a person for acting to assert a right given by the Act.

³⁵³ *Disability Standards for Education 2005* (Cth) s 8.2 notes.

³⁵⁴ *Sian Grahl v The State of New South Wales (NSW Department of Education) and Houston* (2000) EOC 93-095.

³⁵⁵ *Disability Discrimination Act 1992* (Cth) ss 37–39.

harassment and victimisation, and to implement these in practice³⁵⁶

- take reasonable steps to ensure that staff and students are informed about the obligation not to harass or victimise and that they know the appropriate action to take if harassment or victimisation occurs
- take reasonable steps to ensure staff and students are informed about complaint mechanisms available if harassment or victimisation occurs.

An education provider that has no strategy or program in place because it was not aware that harassment or victimisation was happening is unlikely to be able to establish a defence under the Standards or the *Disability Discrimination Act*.³⁵⁷

Measures to comply

Measures the education provider may implement include:

- making sure that policies, procedures and codes of conduct explicitly prohibit harassment and victimisation of students with disabilities and their associates
- ensuring that policies, procedures and codes of conduct include the need for individual strategies and adjustments for a student, including the need to use such supports as a wheelchair, hearing aid, breathing support, interpreter, assistance dog or an assistant or carer
- that procedures for handling complaints or harassment or victimisation are fair, transparent and accountable and that cases and complaints are handled promptly with proper regard for the severity of the matter
- ensuring that professional development programs for staff include identifying and dealing with harassment in education settings as well as policies, procedures and codes of conduct
- informing and reminding staff and students of their rights and responsibilities in maintaining an environment free from harassment and victimisation on the basis of disability.³⁵⁸

³⁵⁶ *Disability Standards for Education 2005* (Cth) s 8.2 notes.

³⁵⁷ Unlike the other standards, unjustifiable hardship is not available as a defence where a provider fails to comply with the standards for harassment and victimisation.

³⁵⁸ Measures to comply are contained in section 8.5 of the *Disability Standards for Education 2005* (Cth). See also Australian Government, 'Review of Disability Standards 2005 Discussion Paper', above n 47, 14.

Main findings

- Discrimination still exists in Victorian schools. Half of the students and parents in the survey reported discrimination at school. One in four educators had witnessed discrimination.
- Bullying is a significant and widespread problem for students with disabilities, with six out of 10 reporting they have been bullied because of their disability. This is much higher than the rate of bullying for the general student population where bullying is estimated to occur to around one in four students.
- Bullying of students with disabilities can also have a racial dimension. All parents of Indigenous students with disabilities in the survey reported that their child had been bullied.
- While existing efforts to reduce bullying generally in Victorian schools are impressive, urgent attention is needed to address bullying specifically based on disability.

Experiences of discrimination

Students were asked if they felt they had been treated unfairly at school because of their disability. Just under half of all the students the Commission surveyed thought that they had.³⁵⁹ These students raised a variety of issues including bullying, being left out, being expelled or suspended and having problems with teachers. One student explained how they were treated unfairly in sport classes:

I have missed out on getting picked because when I am concentrating I look down so I can focus on what they are saying. Coaches think it means I am not listening or interested. I try to explain sometimes and then they think I am stupid. Sometimes I don't understand the instructions and I either get it wrong or ask. Either way they think you are lazy or not interested.³⁶⁰

Just over half of parents surveyed reported that their child had been discriminated against at school.³⁶¹ However, it should be noted that because the survey was conducted on an opt-in basis, these results may be skewed towards a higher reporting rate for discrimination.

³⁵⁹ Twenty-seven out of 59 survey responses.

³⁶⁰ Student with a learning disability, Independent school. Student survey participant.

³⁶¹ 326 out of 581 parents answering this question (56 per cent).

While discrimination was less likely to be reported by parents of students attending government specialist schools (43 per cent, or 41 out of 94), the figure was still very high.³⁶²

Parents of students in Years 7 to 10 reported discrimination slightly more frequently (63 per cent, or 101 of 160) than parents of primary school-aged students or students in Years 11 and 12.³⁶³

When these results were analysed by the child's disability, parents of students with certain disabilities more commonly reported discrimination.

- 68 per cent of parents of children with language disorders reported discrimination.³⁶⁴
- 68 per cent of parents of children with behaviour-related disorders reported discrimination.³⁶⁵
- 63 per cent of parents of children with learning disorders reported discrimination.³⁶⁶

Parents identified a range of issues as discrimination, which are discussed in more detail in other parts of this report. These include: exclusion from excursions, camps, sports programs and school events; problems with transport to and from school or mobility at school; failure to make adjustments or to consult on individual learning plans; lack of funding or resources and problems surrounding exams or assessments.³⁶⁷

³⁶² Reporting rates were higher than average in the Catholic and Independent sectors; however, the number of parents answering this survey question was quite low.

³⁶³ These results should be treated with some caution, as the question did not specify a time frame for the experience of discrimination, and did not specify that it occurred at the school the child was currently attending. This means that the discrimination may have occurred at a previous school.

³⁶⁴ Forty-nine out of 72 parents.

³⁶⁵ Sixty-five out of 95 parents.

³⁶⁶ Seventy-four out of 117 parents.

³⁶⁷ These issues were reported across a number of survey questions.

One parent provided the following example:

Lifts in the school require keys to operate. They would not allow my son to have a key because of security concerns ... This meant that whenever he needed to [use the lift], he had to find a Learning Support Officer or another staff member with a key ... Because they often forgot him, he was frequently late for class, missed lunch breaks while stuck upstairs and sometimes if a class changed location ... he would be unable to join the class. It took over a year, multiple letters and several failed attempts to meet with the principal, before the matter was resolved, basically by someone giving him a key without proper authority to do so.³⁶⁸

Almost one in four educators said that they had witnessed discrimination at their school.³⁶⁹ More educators working at state mainstream schools reported witnessing discrimination (25 per cent, or 153 out of 621), compared to educators working at government specialist schools (14 per cent, or 28 out of 198).

Educators identified similar examples of discrimination as parents, such as exclusion of students with disabilities from camps, excursions, sports events or particular classes; inappropriate behaviour management; showing audiovisual material without captions and a failure to provide or work well with support staff, such as interpreters and integration aides.

Some educators also referred to systemic issues that could lead to discrimination, such as inadequate funding, resources, knowledge, support and time:

... it is usually due to ignorance, lack of time to consider the options rather than a teacher or school wanting to discriminate.³⁷⁰

In addition, some educators raised examples of name-calling and exclusion by other students, as well as instances where other parents did not want a student with disability in their child's class:³⁷¹

Some of the new Prep children were calling a student with autism 'the retarded boy' and they ran away from him and said they were scared etc ... we followed it up and it was coming from one of the parents. The boy in question is a fantastic reader, so I took him in to the Prep class and he read them a favourite book and they all thought he 'was great', the teacher spoke with the parents and all has been well ever since!³⁷²

Although a large proportion of educators had not witnessed discrimination, this may in part be due to some lack of awareness of the kinds of issues that discrimination laws encompass.³⁷³ When asked about discrimination laws at a 'have a say' day, one educator explained:

I don't think all teachers understand that they have a legal obligation to accommodate students with disabilities. More needs to be done for this information to go beyond the principal level.³⁷⁴

The Disability Discrimination Legal Service submitted that the reasons why schools fail to comply with the Disability Standards are various but:

... one of the most prevalent ... is a lack of training, understanding or even knowledge of the *Disability Discrimination Act 1992* ... in public schools. However, even where the relevant school is aware of its obligations under the Standards, without the appropriate resources compliance is rarely possible.³⁷⁵

368 Parent of student attending a Catholic mainstream school. Parent survey participant.

369 Twenty-three per cent, or 194 out of 854 responses. Educator survey participant.

370 Specialist support provider, Catholic mainstream school. Educator survey participant.

371 Educator survey participants.

372 Educator, government mainstream school. Educator survey participant.

373 For example, 38 per cent of educators reported that they were not aware of the existence of the *Disability Standards for Education 2005* (Cth). Looking at these results by type of school, 42 per cent of educator respondents from government mainstream schools did not know about the Standards.

374 Educator survey participant.

375 Submission 7, Disability Discrimination Legal Service, 29.

Experiences of bullying

Students with disability have a right to education without people humiliating, offending, intimidating or distressing them.

Based on our research, bullying appears to be a significant and widespread problem for students with disabilities. Most students and parents who responded to the survey (62 per cent of students and 64 per cent of parents) reported that they or their child had been bullied or harassed at school.

This percentage was slightly higher for parents of children attending state mainstream schools (67 per cent),³⁷⁶ Catholic schools (74 per cent)³⁷⁷ and Independent schools (75 per cent).³⁷⁸ It was lower for parents of children attending government specialist schools (42 per cent of parents who responded).³⁷⁹

In addition, parents of students at secondary school were more likely to report that their child had experienced bullying or harassment.³⁸⁰

Just over half of teachers reported that they had witnessed bullying or harassment of students with disabilities.³⁸¹

This was slightly higher among educators at schools that offered Years 7 to 10 and/or Year 11 and 12, where 60 per cent of educators reported that they had witnessed bullying.³⁸² It was also slightly higher among educators at government mainstream schools (58 per cent),³⁸³ compared to government specialist schools (51 per cent).³⁸⁴

Students with disability in our study were three times more likely to be bullied than the general student population.

With six out of 10 students in the survey reporting they had been bullied, it appears that the likelihood of bullying for a student with disability is much higher than the general student population.

For example, the *Child Health and Wellbeing Survey 2006* reported that 19.1 per cent of parents responded it was 'somewhat true' that their child (4–13 years of age) had been picked on or bullied by other children/young people, while 4.7 per cent responded that it was 'certainly true'.³⁸⁵

Another Australian study reported that 27 per cent of students in Years 4–9 experienced bullying at school on a frequent basis.³⁸⁶ Even though these surveys differed from our survey in methodology and focus, they do suggest that students with disabilities may experience bullying more commonly than their peers.

³⁷⁶ 236 out of 354 parents.

³⁷⁷ Forty-four out of 59 parents.

³⁷⁸ Thirty-seven of 49 parents.

³⁷⁹ Forty-one out of 97 parents. In addition, 12 out of 12 parents of students who were home schooled or distance educated, and 8 out of 11 parents of students attending an Independent special school, reported that their child had experienced bullying/harassment. Note in addition, that these results should be treated with some caution, as the question did not specify if the bullying had occurred at the school the child was currently attending – meaning that it may have occurred at previous schools.

³⁸⁰ Of the parents of children attending primary school, 59 per cent reported that their child had been bullied (210 out of 353), compared to 73 per cent of parents of students at secondary school (167 out of 229).

³⁸¹ Fifty-six per cent, or 479 out of 851 educators.

³⁸² 262 of 440 educators and 245 out of 407 educators respectively. Note that 244 educators indicated that their school offered all levels from primary to secondary. Seventy-one per cent of these worked at government specialist schools. Looking only at these educators, 53 per cent reported that they had witnessed bullying of students with disabilities in schools.

³⁸³ 357 out of 619 educators.

³⁸⁴ 100 out of 298 specialist school educators.

³⁸⁵ State of Victoria, Department of Human Services, 2006 *Victorian Child Health and Wellbeing Survey Technical Report*, (2006) 34.

³⁸⁶ Donna Cross et al., *Australian Covert Bullying Prevalence Study*, Child Health Promotion Research Centre, Edith Cowan University (2009) xxi.

Some disabilities at higher risk of bullying than others

Prevalence of bullying appears to vary according to the student's disability.

- Of 346 parents who stated that their child has an autism spectrum disorder, 70 per cent reported that their child had experienced bullying.
- Of 97 parents who stated that their child had a behavioural disorder (including ADHD), 80 per cent reported that their child had experienced bullying.
- Comparatively, 44 per cent of parents of children with physical disability, and 56 per cent of parents of children with intellectual disability, reported that their child had been bullied or harassed at school.

While the prevalence of bullying for all categories of disability appears to be higher than the general population, these results suggest that children with disabilities that affect their emotions and behaviour are particularly vulnerable to bullying at school. One parent said:

There are many aspects to [my son's] condition that will lead him to being bullied or to get into trouble because of his lack of understanding of how his reactions may seem to others.³⁸⁷

Amaze submitted that many students with autism spectrum disorder experience:

... both overt and covert bullying by other students. The bullying may be overt where a student is subject to ridicule, physical assault or verbal intimidation while covert bullying may include encouraging an ASD student to 'act out' inappropriately or simply be excluded ... there are many stories of ASD students never receiving an invitation to a classmate's party or more sadly that no classmates will attend the ASD student's party.³⁸⁸

They also noted that parents of students with autism spectrum disorder may themselves be isolated from the school community.

Further impacting on the experiences of students with ASD is often the lack of support and even hostile responses to parents of ASD children. Parents have reported being socially excluded from the broader parent school community and in some cases actually experiencing quite intimidating attitudes from other parents. In some cases, this may be due to other parents being defensive of their child but often as not it is based on fear and ignorance by the other parent.³⁸⁹

Types of bullying

Parents reported a range of bullying behaviours against their child.

- 114 parents reported verbal abuse (30 per cent).
- 98 parents reported that their child had been ignored, shunned or excluded (26 per cent).
- 67 parents reported physical violence against their child (18 per cent).³⁹⁰

Sixty-nine parents reported multiple types of bullying. Of these, 62 reported verbal abuse, 56 reported social exclusion, and 56 reported physical violence. Thirty-two reported cyber-bullying. For example, one parent said:

She has been bullied in many different forms. She is regularly shunned and excluded from playing, is called stupid, dumb etc. and generally avoids physical contact with most children.³⁹¹

[He has had] phone calls from other children leaving messages on the answering machine calling him a 'retard'.³⁹²

Most bullying involved taking advantage of their lack of sight, taking books and equipment, hit and run, name calling, throwing things at them and generally being unkind.³⁹³

³⁸⁹ Submission 10, Autism Victoria (trading as Amaze) 3.

³⁹⁰ Note these figures should be regarded with caution. Due to an error in the survey, parents could not select multiple forms of bullying. A further 23 per cent selected 'other', and most of these indicated multiple forms of bullying.

³⁹¹ Parent of student attending a government mainstream school. Parent survey participant.

³⁹² Parent survey participant.

³⁹³ Submission 9, Vision Australia 9.

³⁸⁷ Parent survey participant.

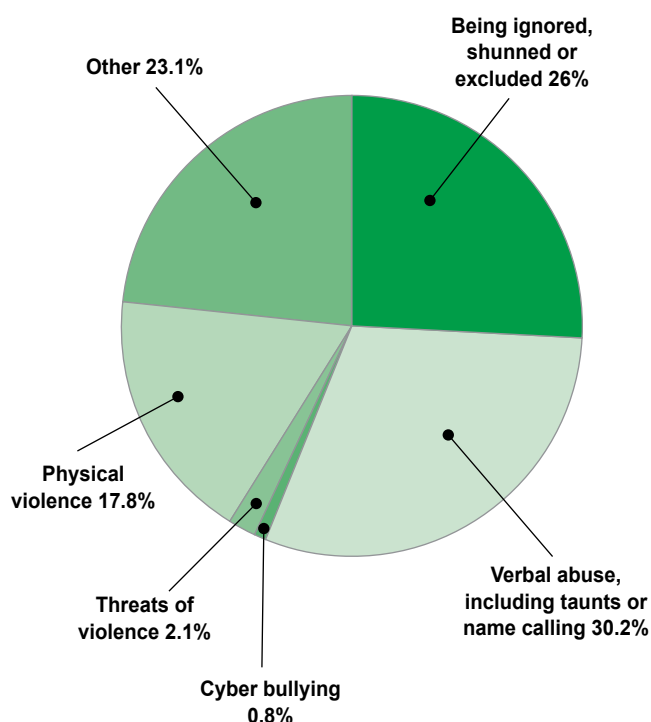
³⁸⁸ Submission 10, Autism Victoria (trading as Amaze) 4.

While most parents described bullying by peers, a few also described bullying by staff members. For example, one parent reported that an integration aide called their child names such as ‘blabber-mouth’, ‘sticky-beak’ and ‘busy-body’.³⁹⁴ A few parents observed that the attitudes or behaviour of teachers could lead to bullying by peers:

There was a lot of bullying in the playground because [my grandson] was called dumb in the classroom by the teacher in front of everyone.³⁹⁵

Amaze identified such behaviours as systemic bullying when schools fail to understand the behaviours that result from autism spectrum disorder, so they interpret and react to students as if they are badly behaved.³⁹⁶ Similar observations were made by Speech Pathology Australia. They noted that bullying and social isolation is intensified when teachers castigate students for not being able to contribute effectively in class or when a behavioural lens is used to respond to a student who has become disengaged.³⁹⁷

Figure 4: Types of bullying or harassment reported by parents



Educators reported similar examples of bullying and harassment against students with disabilities to those identified by parents.³⁹⁸

- 425 educators reported witnessing verbal abuse
- 343 reported shunning or exclusion
- 175 reported witnessing threats of violence
- 201 reported actual violence.

One educator noted in the survey:

Sometimes students with disabilities seem to cop the worst treatment. I am truly bothered by the loneliness and isolation that autism sufferers endure; they often wander the school grounds alone, hide in door wells to eat their lunch, sit alone etc. Sometimes the worst thing is for a child to be ignored by other children.³⁹⁹

A few educators mentioned bullying in the form of students encouraging the student ‘to behave badly so that they break the rules and get into trouble’. Students with disabilities also reported this happening.

Some teachers and a few parents pointed out that some students with disabilities also bully other students:

Students concerned are spoken to and can be suspended for bullying behaviour. Often the disabled student has actually started the bullying and then, at times, they do not get treated the same as others e.g. they might not be suspended. Often this is understandable but at times not. All students do need to take responsibility for their actions.⁴⁰⁰

³⁹⁴ Case study 19.

³⁹⁵ Phone-in 50.

³⁹⁶ Submission 10, Autism Victoria (trading as Amaze) 4.

³⁹⁷ Submission 11, Speech Pathology Australia.

³⁹⁸ Educators were able to select multiple answers.

³⁹⁹ Classroom teacher, government mainstream school. Educator survey participant.

⁴⁰⁰ Specialist support provider, government mainstream school. Educator survey participant.

Student stories of bullying

In the survey, students were not requested to categorise the bullying treatment they may have experienced. Rather, they were given space to tell their story in their own words. Their responses identify a similar range of bullying behaviours, including exclusion, harassment, name-calling and physical violence. Racist and homophobic stereotypes and language were also reported by students:

I was punched and repeatedly smashed into a brick wall whilst being called a 'deaf faggot' because I wear a hearing aid.⁴⁰¹

One time we were doing painting and one girl got some paint in my hair. She and her friends told me to go into the bathroom so they could help me get it out. They locked the door and shoved my head into the sink under some boiling water. I have always been bullied at school because I am different and I can sometimes say things in a way I don't mean.⁴⁰²

Kids tease me by calling me seizure boy. They push me around. They laugh at me. I get obsessed with things and people don't understand about that. They get sick of me talking about it.⁴⁰³

Some students reported that over time the bullying decreased:

I haven't been bullied for a while. When I was younger I used to get teased about my epilepsy and my clumsiness and awkwardness. I used to be left out of lunchtime games that involved physical activity because I wasn't as fast or ran with a funny gait. As we got older though, we started talking more at lunchtimes and running around less. The students now are extremely accepting and want to know as much about my disabilities as possible. I am just one of them and I catch up with them on the weekends and that. They are so much less ignorant than the teachers and even (amazingly) the nurses.⁴⁰⁴

401 Student, Catholic mainstream school. Student survey participant.

402 Student, Catholic mainstream school. Student survey participant.

403 Student, government school. Student survey participant.

404 Student, Catholic mainstream school. Student survey participant.

Bullying of children with disabilities who are from CALD or refugee backgrounds

Several parents of CALD children described situations where their children were teased or isolated because of their cultural background or disability:

One of his classmate teased him calling him 'chino' since I'm his mum ... I only found it out after the camp, he didn't want me anywhere near him thereafter especially [at] the school!⁴⁰⁵

... to make matters worse, his classmates have started making racist comments about his mother.⁴⁰⁶

The CALD critical friends group noted that it is difficult to distinguish between bullying or isolation because of disability and bullying on the basis of cultural background. They stressed, however, that the most important issue is how schools respond to bullying when it occurs.

The Centre for Multicultural Youth (CMY) described a situation where a CALD student with disability was concerned about the immaturity and insensitivity of other students about his disability and the 'gossip' among students from his community. He transferred to a TAFE with a disability support unit. As CMY noted:

[He] felt more comfortable being around people who were more mature in their treatment of people with disabilities, and also enjoyed the anonymity that the city TAFE provided. He appreciated the fact that no one knew his family, community or story and that he wouldn't be treated any differently from anyone else.⁴⁰⁷

Bullying and isolation of Indigenous students with disabilities

Of the 11 parents of Indigenous students who completed the parent survey, all reported that their child had experienced bullying or harassment.⁴⁰⁸

405 Parent of student attending a government school. Parent survey participant.

406 Parent of student attending a Catholic school. Parent survey participant.

407 Case study 39.

408 One Aboriginal student also reported: 'I got bullied due to my race and was isolated.' Student survey participant.

Members of the Victorian Aboriginal Disability Network also shared examples of bullying because of disability and race at our critical friends group. One participant had witnessed some students on a train calling a group of Indigenous students 'monkeys'. This participant challenged these students.⁴⁰⁹

Effects of bullying

International evidence indicates that while students with and without disability face significant negative emotional, educational and physical results from bullying, students with disabilities are both vulnerable and disproportionately impacted.⁴¹⁰ This was confirmed by our research.

Parents reported that bullying had profound effects on their children, including impacts on medical conditions, depression, anxiety, sleeplessness, nightmares, anger, bed-wetting, school refusal and suicidal thoughts.⁴¹¹ Some parents described how students withdrew from school or tried to find ways to hide their disability:

She shut down and went into a shell. Towards the end she was wetting the bed due to fear and stress of the mainstream school.⁴¹²

My daughter was finding ways so that she didn't have to wear her hearing aids to school because of the name calling.⁴¹³

One parent implied that bullying and harassment had led to some students withdrawing from mainstream school:

The class that my child is in this year at special school consists of 10 kids that were bullied at mainstream school and had to go somewhere else.⁴¹⁴

In fact, for one student, bullying led to a complete withdrawal from school:

I have not been to school for 20 months. The year before, I did three schools in one year. One I only did three days before being bashed. I have only completed year eight and have been not attending since then. No one cares and they can't find a school that keeps me safe.⁴¹⁵

A number of parents described situations where their children had retaliated in response to bullying, leading to a deteriorating relationship with the school:

[My son] was being mercilessly taunted by a classmate. This classmate was the younger brother of another student with ASD. [My son] picked up a rock [and] threw it at the boy who was taunting him, just as another student [and friend] ran past. The rock hit his friend and split his lip. [My son] received 2 days exclusion from school and no advice, sanction or warning was ever given to the student who taunted [my son] or his parents ... in the days and months that followed school days became a downward spiral of ever increasing non-compliance, verbal aggression, physical violence, school refusal, meltdowns and an anxiety state of constant flight or fight response ...⁴¹⁶

A number of parents in our survey also reported that their children had angry verbal or physical outbursts at home after experiencing bullying.

While not the focus of this study, a few parents said that bullying, or the effects of bullying, had an impact on the siblings of children with disabilities:

Not only was our son bullied because of his disability. Our daughter was also harassed and bullied. She was physically assaulted, targeted by other students because of her brother.⁴¹⁷

Responses to bullying

It is important to acknowledge the strength of many students with disabilities in the face of bullying. For example, one student told the Commission:

I got picked on at school for most of my life 'cause I was a bit different. I didn't have that many good friends at school but I got through those tough years and I became a community leader for my school.⁴¹⁸

409 Victorian Aboriginal Disability Network critical friends group.

410 Young, Nieman and Gelser, *Bullying and students with disabilities: A briefing paper from the National Council on Disability* (2010) 1.

411 Parent survey participants.

412 Parent of student attending a government specialist school. Parent survey participant.

413 Parent of student attending a Catholic school. Parent survey participant.

414 Parent of student now attending a government mainstream school. Parent survey participant.

415 Student survey participant.

416 Case study 3.

417 Parent of student attending a government mainstream school. Parent survey participant.

418 Student, government specialist school. Student survey participant.

Several parents also noted the resilience of their children and how their child learned positive ways to respond to bullying:

He became quite stressed and anxious. However, he used the skills learned at his previous special school, and attempted to handle the situation himself. He still needed the principal to step in, and parental guidance, but learned a lot from the experience. The next time it happened he dealt with it himself.⁴¹⁹

The vast majority of parents who reported that their children had been bullied said they had reported the bullying to the school.⁴²⁰ There were mixed impressions about how schools dealt with bullying. A quarter of parents said the school had responded very well.⁴²¹ Positive comments included:

The school worked really hard to stop it and I believe it did stop.⁴²²

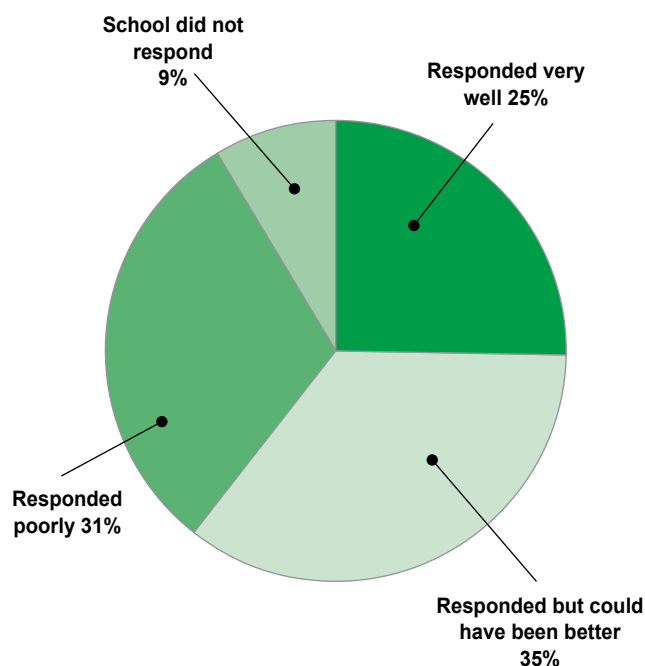
[The staff] tried really hard to change behaviours and gave examples of modelling alternative behaviours.⁴²³

However, around two in three parents felt that the school's response was either poor or could have been better.⁴²⁴

Around one in 10 parents reported that there was no response from the school.⁴²⁵ One parent was told that staff could not do much about bullying because the bullies would 'take it out on her son':

... when we questioned this and suggested some training and resources be sought, we were told that we expected too much of staff – that, after all, our son has autism so we should not expect him to have any friends.⁴²⁶

Figure 5: Parents' views on how well the school responded to bullying



Educators were generally positive about how their school responded to bullying. Almost all (97 per cent) reported that their school had policies in place to address bullying and harassment.⁴²⁷ These results were roughly consistent across school levels and types.⁴²⁸

Educators described how their school managed bullying, including through general discipline policies and behaviour management plans, general teaching about appropriate behaviour, role plays, social stories and counselling. Other educators referred to restorative justice programs, positive behaviour programs, police liaison officers and specific programs, including the 'You can do it' and 'Jigsaw' programs.⁴²⁹

419 Parent of student attending an Independent school. Parent survey participant.

420 Ninety per cent or 341 out of 378 parents who answered this question.

421 Eighty-six out of the 338 parents.

422 Parent of student attending a government mainstream school. Parent survey participant.

423 Parent of student attending a government mainstream school. Parent survey participant.

424 Sixty-five per cent, that is 223 out of 338 respondents.

425 Nine per cent or 29 out of 338 respondents.

426 Parent of student attending a Catholic school. Parent survey participant.

427 830 out of 856 educators who answered this question.

428 While this is a very positive result, the Commission notes a previous national survey of students with disabilities conducted by the Australian Youth Affairs Coalition. In this survey 54 per cent of young people said there was none (or were unaware of) any school system for help stop bullying and discrimination against students with disabilities. See <[www.ayac.org.au/uploads/AYAC_DisabilitySurvey_summary\[1\].pdf](http://www.ayac.org.au/uploads/AYAC_DisabilitySurvey_summary[1].pdf)> at 20 June 2012.

429 Other programs mentioned by educator survey participants included *Bounce back*, *Jigsaw*, *Superclubs*, *Bullybusters*, *Bullies2Buddies*, *Habits for Harmony* and *Habits of Mind*.

One educator – and parent of a child with disability – described her observations of a school with a good anti-bullying program:

I know one school that uses restorative practice – it is working. Everyone is on board, and they have a consistent approach. I see a huge difference in the overall school and how they interact with each other. It has come about because a psychologist was put on staff. She attends all staff training, she is part of the system. They have rules and structures, clear guidelines. The tone of the school is calmer.⁴³⁰

When educators were positive about their school's response to bullying, they generally described situations where they were supported by other staff or by a whole-of-school approach. For example, educators said:

I personally use restorative practices to deal with a lot of bullying. If I feel unable to manage it, we have a great welfare team who will support the process.⁴³¹

A small number of educators said that their school does not respond well to bullying of students with disabilities:

[Bullying] has not been managed by the school, even though there might be school policies that might reflect on the subject. School staff are restricted in what they can do as every incident must be reported to the school principal, who then makes the decision what action to take. Many parents are not informed of this behaviour, because the bullying and harassment is undertaken by certain members of staff at the school.⁴³²

[The school] found it difficult to change the culture of the school/students. [The] focus went on the deaf student to manage their behaviour or issue, rather than make it a whole school approach.⁴³³

Current efforts to eliminate harassment and victimisation, including bullying

All Victorian government schools must have a Student Engagement Policy, and this must include statements about bullying and cyber-bullying.⁴³⁴ Schools are also expected to develop specific strategies to promote positive behaviour and to prevent bullying.⁴³⁵ Similar practices operate in the Catholic system and in individual Independent schools, where anti-bullying strategies have been implemented.⁴³⁶

The Department of Education and Early Childhood Development (DEECD) publication *Building respectful and safe schools* is a useful resource that outlines the characteristics of safe schools, as well as making suggestions about prevention programs and response strategies.⁴³⁷ It outlines some programs/strategies that are being used in Victorian schools, including assertiveness training, bystander training, restorative practice and buddy systems. It also mentions three specific programs: *Friendly Schools and Families*, *School-wide Positive Behaviour Support* and *You can do it! Education*.⁴³⁸ These programs offer packages of training, resources and auditing tools and strategies for preventing bullying, such as teaching social skills.

For example, the *School-wide Positive Behaviour Support* program takes a three-tiered approach targeting the whole school community, as well as developing specialised programs for students with behavioural difficulties.⁴³⁹

434 State of Victoria, Department of Education and Early Childhood Development, *Effective schools are engaging schools: Student engagement policy guidelines*, 2009, 14. <www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/segpolicy.pdf> at 31 July 2012.

435 State of Victoria, Department of Education and Early Childhood Development, *Building respectful and safe schools: A resource for school communities*, 2010, 9. <<http://www.education.vic.gov.au/healthwellbeing/respectfulsafe/default.htm>> at 31 July 2012.

436 Key informant interview, Catholic Education Office Melbourne; key informant interview, Independent Schools Victoria.

437 Department of Education and Early Childhood Development, 'Building respectful and safe schools', above n 435. See also <https://edugate.eduweb.vic.gov.au/edulibrary/Schools/Circulars/2012/S206-2012_attachment_info_for_schools.pdf> at 11 September 2012.

438 Ibid 19–23.

439 Ibid 23.

430 HASD 2.

431 Specialist support provider, government mainstream school. Educator survey participant.

432 Specialist support provider, government specialist school. Educator survey participant.

433 Teacher of the deaf, government mainstream school. Educator survey participant.

[We have] school-wide positive behaviour support in school (PBS). [It] caters for a very broad range of disability – it covers any student who has a need (intellectual or social). It can be help for a teacher as well – expanding the notion of who you're capacity building. We have para-medical staff as well. If an issue is raised, we ask, 'How can we tackle this, school wide?' [We] make sure the family and school relationship is collaborative and supportive.⁴⁴⁰

It is up to each school to choose which programs to use in their school. According to responses in our survey, schools use a wide range of programs and approaches.⁴⁴¹

Opportunities for improvement

Overall, the Commission found that the range and effort on anti-bullying programs reported by educators was impressive. What was less clear, however, was the implementation of strategies and actions to prevent bullying based on disability.

Student experiences of bullying in government schools may currently be measured by schools using the Attitudes to School survey, administered to students each year. This survey contains several questions that may be used as proxy measures for determining rates of bullying in schools. Parents are directly asked about bullying in their survey. However, at this stage, no specific questions about experiencing or witnessing bullying of students with disabilities are included in either of these surveys.

Previous research suggests that specific strategies to prevent and respond to bullying on the basis of disability often do not feature in school policies. For example, anti-bullying policies from Victorian and New Zealand schools were analysed in 2011.⁴⁴² In both jurisdictions, definitions rarely included bullying on the grounds of homophobia, religion or disability or bullying between adults and students. Policies also lacked detail about the responsibilities of non-teaching staff in dealing with bullying and rarely described follow-up after a bullying incident.⁴⁴³

DEECD's *Building respectful and safe schools* resource includes a definition of discrimination and states that bullying can occur because of perceived difference (such as disability).⁴⁴⁴ It also includes a specific section on homophobic bullying.⁴⁴⁵ However, it does not include specific guidance on preventing or responding to bullying of students with disabilities.

Given the extent of bullying against students because of their disability described in this research, more dedicated work to develop disability-specific anti-bullying strategies is an urgent priority.

Amaze made two suggestions to tackle the bullying of students with disabilities in schools:

... funding be provided to develop and deliver 'supporting difference' workshops in all schools. These workshops would focus on how and what students can/should do to help other students who are different.⁴⁴⁶

Amaze suggested that this program should not 'target' students with autism spectrum disorder, but should assist all students who are 'different'. They also recommended that:

... schools consider alternative ways to support ASD students in the play area including the adoption and implementation of a 'buddy' or 'big brother/big sister' program to assist ASD students to navigate the playground and to develop appropriate social skills.⁴⁴⁷

440 HASD 5.

441 The Commission also notes that part of the Primary Welfare Officer's role is to tackle bullying. See <<http://www.education.vic.gov.au/healthwellbeing/support/primarywelfare/default.htm>> at 15 August 2012.

442 Ninety-three Victorian schools and 253 New Zealand Schools.

443 Louise Marsh et al., 'Content analysis of school anti-bullying policies: A comparison between New Zealand and Victoria' (2011) 22 *Health Promotion Journal of Australia* 3, 172–177.

444 Department of Education and Early Childhood Development, 'Building respectful and safe schools', above n 435, 6.

445 Ibid 25.

446 Submission 10, Autism Victoria (trading as Amaze) 4.

447 Submission 10, Autism Victoria (trading as Amaze) 4.

Work on developing a stronger focus on targeted bullying is not new, and there is a sound basis to build upon. In recent years, there has been very positive work that educational authorities have undertaken in partnership with the Commission and others to develop specialist inclusion programs and tools that focus on target communities of students, for example the Safe Schools Project⁴⁴⁸ and the Sexual Diversity Checklist.⁴⁴⁹ This experience should be built upon to develop comprehensive and targeted anti-bullying resources and actions to better protect students with disabilities, consistent with obligations under federal and state anti-discrimination law.

Recommendations

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005* that:

11. Education authorities develop and implement specialised programs in schools to target and address bullying on the basis of disability.
12. The annual government school Attitude to School Survey include a specific question measuring the incidence or witnessing of disability-based bullying. That this baseline data then be used to track improvements in the prevention and response to targeted bullying. Catholic education authorities and Independent schools should undertake the same data collection and performance measurement using relevant student surveys.
13. Professional development courses for educators include specific training on identifying, preventing and responding to bullying based on disability (or other personal characteristic).
14. Departmental guidelines for student support groups and individual learning plans be amended to include consideration of proactive anti-bullying strategies for students with disability at risk of bullying.

448 This includes recent partnerships between the Commission, teachers and students to prevent and respond to homophobia in government schools. See also <http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=1136&Itemid=448> at 25 July 2012.

449 Australian Research Centre in Sex, Health and Society, La Trobe University, *How to support sexual diversity in schools: A checklist* (2008).

Part 3: Specific issues of concern

This part of the report considers issues raised by parents and advocates to the Commission prior to the commencement of this research. Some of these concerns included use of suspension and expulsion of students with disabilities, use of restraint, transport problems and lack of confidence in the complaints system.

As these issues had been raised with the Commission, we wanted to find out more. For this reason, we asked questions about these issues in the surveys and also gathered views on their prevalence, impact and solutions in the 'have a say' days, critical friends consultations and key informant interviews.

As the research progressed, further issues emerged. These included transitions between stages of schooling, consultation between schools, students and parents and part-time attendance at school among students with disabilities. Again, these issues were further explored in 'have a say' days, critical friends groups and key informant interviews and findings reported.

Chapter 8: Student support groups and individual learning plans

Main findings

- Experiences of consultation vary between schools and between regions. The quality and consistency of consultation is dependent upon the attitudes, knowledge, efforts and resources of school staff.
- Around one in three parents reported not being consulted by the school about the adjustments their child required to participate on the same basis as students without disability.
- As part of ongoing communication between the parent and school, student support groups (SSG) are the main mechanism for consultation in the government school system. Similar processes occur in the Catholic and Independent school sectors. These work well in many schools, however, the frequency, quality and results of these meetings are inconsistent, despite such groups being mandated under the *Program for Students with Disabilities Guidelines*.
- Individual learning plans (ILP) are the lynchpin in the government school system for setting and delivering on learning goals for students with disabilities. However, not all students who should have a plan have one. The development, quality and monitoring of these plans is inconsistent and there is no systemic monitoring to ensure these plans are of a reasonable quality and are being implemented.

General experiences of consultation

Please stress the importance for all who work within the education system ... to be conscious of not judging the parents who judge themselves already. Just advising the parents that they are hearing what the parents are saying. Be upfront with parents and advising of what can and cannot be changed to accommodate their child. This is what parents want – honesty.⁴⁵⁰

Consultation with parents and students is an essential part of understanding the nature of a student's disability and what adjustments are required to ensure access and participation at school. For this reason, consultation is mandated in the *Disability Standards for Education 2005* (the Standards).

The Commission's research heard a number of positive examples from parents about their communication with teachers; however, many also reported negative experiences.

⁴⁵⁰ Parent survey participant.

Our survey asked parents if the school had ever consulted with them about what reasonable adjustments and support their child required. Educators were also asked if they consulted with parents and students with disabilities.

- 87 per cent of educators reported that they consulted with parents and students with disabilities on adjustments to accommodate the specific needs of the student.⁴⁵¹
- 71 per cent of parents reported that the school had consulted with them.⁴⁵² This was broadly consistent across all school sectors, between mainstream and specialist schools and for all stages of school, from Prep through to Year 12.⁴⁵³

While this result is better than our findings on participation of students with disabilities generally, it is still sub-optimal.⁴⁵⁴ It means that around one in three parents had not been consulted by the school about the adjustments their child required to participate on the same basis as students without disabilities. This is of concern as consultation with parents and students is part of each school's legal obligations.⁴⁵⁵

Student support groups

Student support groups are the primary means of consultation in the state system

In the government school system, all students in receipt of Program for Students with Disabilities (PSD) funding must have a student support group (SSG) established.⁴⁵⁶ Sometimes these are called parent support groups.

The Department of Education and Early Childhood Development (DEECD) issues detailed guidance on the role and activities of the SSG each year.⁴⁵⁷

The *student support group guidelines* are supplemented by references to the SSG in the funding guidelines for the PSD. These describe the SSG as 'a cooperative partnership between the parent/guardian/carer(s), school representatives and professionals to ensure coordinated support for the student's educational needs'.⁴⁵⁸

The focus of the SSG is on educational planning and monitoring of a student's progress. The SSG is tasked with:

- identifying the student's needs, which includes identifying the most appropriate learning style
- determining adjustments that need to be made to the curriculum
- setting short-term and long-term educational goals that enable the student to undertake a meaningful educational program
- completing and implementing an individual learning plan (ILP)
- monitoring and evaluating the plan to ensure progress for the student.⁴⁵⁹

Formal consultation through the SSG (or similar) is probably the single most important means to ensure that all people supporting the student with disability and the parents have a shared understanding about what the student needs to get the best possible educational outcomes. They are also the immediate mechanism for making sure the school delivers on its commitments and, as such, provides an important accountability measure at the school level. It is therefore vital that these groups are regularly held, properly constituted, fulfil their brief, and are respectful of parental and specialist input.

451 867 educators answered this question. Of these 758 said parents and students were consulted, 44 per cent said they were not. Sixty-five respondents did not know.

452 587 parents answered this question. 419 said they had been consulted. 168 had not been consulted.

453 Specific issues were also raised regarding the participation of parents with disability. For example 'As a deaf parent, I would have liked to see the school have access to ample funds to allow myself and other deaf members of the family to attend school events. Auslan as a language other than English should be more encouraged in schools and actively funded.' Parent survey participant.

454 Fifty-three per cent of parents in the survey reported that their child with disability was not able to participate fully at school.

455 Disability Standards for Education 2005 (Cth) s 5.2(2)(b).

456 'A student support group is mandatory for students in the Program for Students with Disabilities and strongly encouraged for any student with additional needs.' State of Victoria, Department of Education and Early Childhood Development, Program for Students with Disabilities Guidelines 2013 (2012) 9. <www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf> at 31 July 2012.

457 State of Victoria, Department of Education and Early Childhood Development, student support group Guidelines 2013 (2012). <www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-SSGGuidelines.pdf> at 31 July 2012.

458 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 9.

459 Department of Education and Early Childhood Development, 'Student Support Group Guidelines', above n 457, 15.

Similar mechanisms operate in Catholic and Independent schools

Catholic schools have a process with parents to negotiate an annual plan called a 'program' for the student. This program is developed by the program support group, which is similar to an SSG. The program is signed by the parents or carers and forms the basis of the adjustments that the school will make using funding provided by the Catholic Education Commission funding committee.⁴⁶⁰

Independent schools also have a program support group, although it is not mandatory to establish such a group as all schools in this sector are independent entities. Independent Schools Victoria (ISV) does encourage its members to establish these groups in order to ensure that those most concerned for the student work together to provide effective support for the student. The ISV *Students with Disabilities Handbook* states:

A program support group is effective for planning and evaluating a student's program and it is strongly recommended that such a group be established for any student who requires ongoing monitoring and support including a student with a disability.⁴⁶¹

Educator experiences of the student support groups

The majority of educators responding to the Commission's survey said that consultation with parents and students with disabilities takes place at the SSG or other meetings. This reflects the high proportion of survey participants from the government school sector where this terminology is used.⁴⁶²

Educators from the government school sector reported that the child's specific needs are usually determined on enrolment when a consultation and initial assessment takes place (partly to determine funding eligibility). The student's progress and requirements are then reviewed on an ongoing basis, usually once every term, through regular SSG meetings.

Educators suggested that the process is different for students with disabilities who are not funded through the PSD and that these students' needs are generally addressed on a more ad hoc basis.⁴⁶³

Other means of consultation and monitoring student progress reported by educators in our survey included:

- communication booklets (a daily communication book between the school and home) and diaries
- emails, phone calls and other informal methods as needed (also for review of progress)
- meetings with stakeholders, such as specialist support providers
- parent information nights
- parent and teacher interviews.

Educators described the process, purpose and frequency of SSG meetings and discussions about students' needs. They also highlighted some of the challenges involved in making the SSG work effectively. Those who had taught at multiple schools indicated that levels of commitment can vary from school to school. It would also appear that resource and funding constraints can lead to poor organisation; for example, where one person bears the responsibility to coordinate meetings and motivate others but does not have time to do this effectively. This can lead to variations in practice between schools:

Schools are required to hold support meetings, but it has been my experience that the teacher who coordinates the disabilities program has too little time allowance to do an effective job.⁴⁶⁴

Educators were also asked about the process of reviewing adjustments, including consultation with parents and students, as required by the Standards. The majority of survey responses indicated that reviews take place largely through SSG meetings, other meetings and informal communication as needs arise. Others said that reviews are generally done on a needs basis.

Some educators reported that plans and adjustments are also reviewed through annual school-based surveys.⁴⁶⁵ These appeared to complement the consultation processes already mentioned and were listed by these respondents in addition to other methods of communication between parents and the school.

⁴⁶⁰ Key informant interview, Catholic Education Office Melbourne. Funding in the Catholic system is discussed further in Chapter 14.

⁴⁶¹ Independent Schools Victoria, above n 323, 5.

⁴⁶² In Catholic schools, Independent schools and specialist schools these may be called parent support groups.

⁴⁶³ Educator survey participants.

⁴⁶⁴ Classroom teacher, government school. Educator survey participant.

⁴⁶⁵ Victorian government schools are required to undertake annual parent and student surveys. Seven educators spoke specifically of these surveys.

Parent experiences of student support groups

A number of parents made positive comments about the effectiveness of SSG meetings:

The regular student support group meetings work well – they have been very positive for us. At the end of each meeting, we always planned the next meeting. Usually, the visiting specialist teacher, integration coordinator, Vice Principal, my daughter and I would meet.⁴⁶⁶

Because we are privately funding an OT to come into school, school are supportive of our endeavours and therefore include both us as parents and the OT in any decision making with our child.⁴⁶⁷

Parents spoke of the importance of working together with the school, particularly around crucial matters concerning medication or other needs. They also stressed that regular communication between parents and teachers is essential to manage behavioural issues appropriately in a consistent and supportive manner:

My son was the first at primary and the second at secondary with autism. I had to work very closely with primary staff teaching them the best way to teach my son. I organised specialists to visit the school, wrote to parents explaining why my son acted differently, and had continual chats with staff every week about what had happened in his life that may affect his learning and behaviour.⁴⁶⁸

Inconsistency of approach

However, parents who reported having positive experiences with SSG meetings also suggested that their experiences varied at different times or from school to school and that there could be a lack of consistent organisation and commitment to the SSG meetings.

This is consistent with the findings of the Victorian Auditor-General who found that 'while the intent and purpose of having SSGs is sound, parents advised that meetings did not occur unless they initiated them, were often not documented, and student outcomes were often not identified. Parental awareness of SSG processes was generally poor'.⁴⁶⁹

Parent 'have a say' days also highlighted a degree of dissatisfaction with consultation arrangements; for example, some parents who may have been involved in successful SSG meetings that now take place more infrequently.

We have gone a whole year without a meeting in the past. High school was great, but primary school was not willing to listen.

SSGs were good early on. Then they drop off, and start up again around Christmas.⁴⁷⁰

Student support meetings while required are not always followed. This is more an issue in secondary school settings when it is difficult to coordinate all the teachers.⁴⁷¹

Some educators also reported that practice was patchy:

As I cover over 25 schools [consultation/organisation] varies between being excellent and following guidelines, having plans ... to SSG meetings being shocking, no records, slapdash meetings, no understanding of obligations.⁴⁷²

Quality of consultation

Communication is vital and we try to involve the student and parent/s as much as possible. If the student participates in the decision-making and the parent is actively supportive, the overall outcomes are more successful.⁴⁷³

While some parents indicated having positive relationships and partnerships with the school through the SSG, some felt that, in the absence of resources, the changes necessary to make a difference to their child's education would not be realised.

[We are] well consulted, but the teachers and school has no resources to make a difference.⁴⁷⁴

Others reported that consultations and meetings either do not happen or, if they do, are not genuinely consultative.

466 Case study 38.

467 Parent of student attending a government mainstream school. Parent survey participant.

468 Parent of student attending a government mainstream school. Parent survey participant.

469 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 25.

470 HASD 9.

471 Submission 9, Vision Australia, 8.

472 Visiting teacher, government mainstream schools. Educator survey participant.

473 Educator, government mainstream school. Educator survey participant.

474 Parent of student attending a government mainstream school. Parent survey participant.

Some parents said they have to push the school for the SSG or parent support group meetings (PSG) to take place.⁴⁷⁵ Others said they felt the meetings were not always effective or that their concerns are not heard:

PSG meetings were few and far between and goals and interventions were never carried out. It was basically just lip service to enable teachers to tick appropriate boxes.⁴⁷⁶

Some parents also told us that changes to adjustments are made without their consent or knowledge and that they have to actively request information, such as minutes of these meetings.⁴⁷⁷

The school has not discussed with us as parents any changes made to support time. Changes made to my child were due to the school's need, not what was of benefit to my child.⁴⁷⁸

Hours for the aide were reduced without my knowledge. The aide was used for another child in the class instead. The aide was changed twice without any consultation or notice and our son found that very hard to adjust to.⁴⁷⁹

One parent indicated that an SSG had not been established and that the school had been writing individual learning plans without consultation.⁴⁸⁰

Respecting parent knowledge

We try and help the school as we know what helps but they pretend to listen and then do what they like ... they say they are the experts.⁴⁸¹

A number of parents said they had to do a lot of work themselves to ensure that their child can participate at school, with some teachers ignoring or being unreceptive to the parent's knowledge about their child's needs and how their child learns. Some Indigenous parents told us that the SSG meeting can be 'shaming'.⁴⁸²

⁴⁷⁵ Parent survey participant.

⁴⁷⁶ Parent of a student attending a government specialist school. Parent survey participant.

⁴⁷⁷ HASD 9.

⁴⁷⁸ Parent of student attending a government mainstream school. Parent survey participant.

⁴⁷⁹ Parent of student attending a government mainstream school. Parent survey participant.

⁴⁸⁰ Parent survey participant.

⁴⁸¹ Parent survey participant.

⁴⁸² HASD 11.

Parents felt that their intimate knowledge and understanding of their child and his or her learning needs should be respected by teachers and the school community. As one parent put it, 'You may be an expert in your field, but I am an expert in my son'.⁴⁸³

Other comments included:

I would like to be able to assist teachers without having to feel like a nuisance and know it all.⁴⁸⁴

Teachers need to have a better understanding of her problems ... and not brush me off like I am stupid and don't know what I am talking about.⁴⁸⁵

Others wanted to see a broader, whole-of-person approach taken:

The education system doesn't appear to be very good at seeking outside support, or considering the whole person when dealing with the student. For example, families may be consulted, but rarely will others who work with the student be fully involved in helping to plan for what's best for the student. I like the idea of a 'whole of life' plan for our kids with disabilities, where every aspect of her life would be covered.⁴⁸⁶

Relationships with Indigenous parents and communities

Indigenous community members discussed the importance of engaging parents with schools and services, with a focus on inclusive processes that look beyond traditional conversations between schools and parents:

[Schools need to] think of ways to engage that suit parents, not just parent-teacher interviews. For example, one school had a Bushdance Welcome Night and a sausage sizzle, and now they have 19 new families in Prep.⁴⁸⁷

Having a place to go for Indigenous parents who have to fill in forms would be good – a parents hub for support and so on [at the school]⁴⁸⁸.

⁴⁸³ HASD 6.

⁴⁸⁴ Parent of student attending an Independent school. Parent survey participant.

⁴⁸⁵ Parent of student attending a government mainstream school. Parent survey participant.

⁴⁸⁶ Parent survey participant.

⁴⁸⁷ HASD 11.

⁴⁸⁸ HASD 11.

On the theme of broader engagement within the education system, Speech Pathology Australia said:

SPA strongly advocates for active and inclusive dialogue with Indigenous communities and those from disadvantaged and culturally and linguistically diverse backgrounds, so as to facilitate their meaningful engagement in relation to current and future education initiatives.⁴⁸⁹

Individual learning plans

The development of individual education plans to meet individual student's needs and access to support are critical factors to enabling the participation of students with disability in schools.⁴⁹⁰

State school educators reported that the main purpose of SSG meetings is to discuss and review ILPs and to develop and measure progress against agreed goals. These plans are sometimes also called individual education plans (IEPs).

The *Program for Students with Disabilities Guidelines* state that in order to maximise opportunities for students with disabilities, policy and practice should reflect, among other things, 'curriculum based Individual Learning Plans developed by a student support group that set out the student's short-term and long-term learning goals'.⁴⁹¹

Thus, ILPs are a key component in the DEECD strategy for ensuring inclusion of students with disabilities.⁴⁹²

An ILP is expected to be completed for all students in receipt of PSD funding. The goals and strategies in the plan should form part of the PSD application. There is no one method for developing an ILP, but there are template examples available for schools to utilise.⁴⁹³

Among those in receipt of PSD funding taking part in our survey, three-quarters of parents reported that their child had an ILP. Seventeen per cent indicated that they did not have a plan, and 8 per cent said they did not know if their child had one.⁴⁹⁴ This is in spite of the fact that such plans are mandatory for all government school students with PSD funding:

I have asked for one but have never received or viewed one and I was told that my child did not have a disability and therefore did not need one.⁴⁹⁵

He had one last year but I was told that now he is in year eleven he does not need one.⁴⁹⁶

I asked endlessly for an ILP but keep being told that there isn't such a thing.⁴⁹⁷

Schools also have the discretion to develop ILPs for students with disabilities who do not receive PSD funding but who may benefit from a plan. A number of survey respondents whose children did not have PSD funding indicated that their child did have an ILP in place. The Commission considers this to be a positive step.

Of those parents whose child did not receive PSD funding, 46 per cent said their child had an ILP, 39 per cent said their child did not have an ILP and 15 per cent said they did not know if their child had an ILP or not.⁴⁹⁸

493 'While there are inconsistencies, we are working on getting more consistency with ILPs. Quality is variable—increasingly providing more explicit advice and focus on achievement... Part of future work is looking at benefits of a more standardised ILP'. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

494 142 parents whose child received Program for Students Disability reported that an individual learning plan was in place (75.5 per cent). Thirty-one parents reported no plan was in place. Fifteen parents did not know.

495 Parent of student attending a Catholic school. Parent survey participant.

496 Parent of student attending a government mainstream school. Parent survey participant.

497 Parent of student attending a government mainstream school. Parent survey participant.

498 Twenty-eight parents reported a non-funded student having an ILP. Twenty-four did not have an ILP. Nine did not know.

489 Submission 11, Speech Pathology Australia, 3.

490 Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 42.

491 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 22.

492 Aboriginal students must also have an individual learning plan. See Department of Education and Early Childhood Development, 'About Wannik', above n 189.

Involvement of parents in developing the ILP

Among the 341 parents in our survey whose child had an ILP, there was a mixed level of satisfaction regarding the consultation involved in developing the plan.

- 64 per cent of parents reported being well consulted on the development of the ILP.
- 32 per cent did not feel well consulted and were told what would be in the plan.
- Less than five per cent reported not being consulted at all.⁴⁹⁹

These satisfaction rates were broadly the same, regardless of whether the ILP was mandatory or not. However, the reporting rate of 'no consultation' was marginally less for PSD-funded students.⁵⁰⁰

Our school has individual learning plans for every child in the school. The teacher and the children work together to agree on three goals for the children (personal goal, maths goal, literacy goal). At three-way conference every semester (parent/teacher/child interview) the parents discuss the goals with the child and teacher and the strategies that will be put in place to assist the child to achieve these goals and then all parties sign and date the goals. At the next three-way conference we review the goals.

Also, I have built a great rapport with both my child's classroom teacher and the assistant principal who oversees all the children with special needs in the school. I am able to talk to either one of these teachers on a regular basis and discuss my child's progress and his needs. I keep them informed about what is happening at home and provide copies of all our son's therapy appointments with Occupational Therapist and Speech Pathologist and Paediatrician.

The school keeps me informed of my son's progress and needs at school and lets me know what I can do to reinforce and support his learning at home. I think it is great and it works really well for us and my son knows that we are all working together to support him.⁵⁰¹

Some parents were overwhelmed by the process and did not have confidence in the school's capacity to develop the plan:

The assessment/collaboration with school process has been a bit of a mystery to me – we have not been specifically informed of an 'individual learning/education plan' although we know that some changes have been made.⁵⁰²

I am amazed that I have had to drive the plan. The school did not offer me any guidance in terms of what sort of plan/steps would be helpful for my son. They do not have any idea what his issues are or how to help him. I have had to explain and suggest all aspects of his learning plan. I have appreciated the willingness of the school to listen to me ... I feel very sorry for other parents and children who have no understanding of education and children's learning needs. Their children float along with very little direction and ineffective assistance. They are baby sat in schools and that is NOT good enough.⁵⁰³

Using specialist expertise when developing plans

Consistent with guidance from the DEECD, educators reported that ILPs are often developed with the assistance of external professionals, such as health professionals, psychologists, and speech and occupational therapists. Other specialists, such as the family liaison officer, agencies such as Vision Australia, Statewide Vision Resource Centre and the Visiting Teacher Service, may also be involved.

However, Vision Australia reported that the visiting teacher's role is not always reflected in the ILP document. They also noted that families had mentioned that ILPs are 'very useful but the care in development and attention to these plans are often left wanting'.⁵⁰⁴

As one parent commented:

The bare minimum is done to meet the standards of an IEP and seems to be based on the principal class officer's decision instead of professionals in the area of autism. They also barely acknowledge any recommendation if it is not made by an employee of the department.⁵⁰⁵

499 215 parents said they were well consulted, 107 reported not being well consulted, 15 said they were not consulted at all. Four did not answer this question.

500 3.5 per cent rather than 4.5 per cent.

501 Parent of student attending a government mainstream school. Parent survey participant.

502 Parent of student attending a government mainstream school. Parent survey participant.

503 Parent of student attending a government mainstream school. Parent survey participant.

504 Submission 9, Vision Australia, 8.

505 Parent of student attending a government specialist school. Parent survey participant.

Quality of plans

I wrote it myself because the PSD Coordinator didn't know how to do one!⁵⁰⁶

In its consultations, the *Review of the Disability Standards for Education 2005* found that nationally, 'There is limited accessible practical advice and training on implementing the Standards for educators about identifying individual needs, developing individual education plans and providing appropriate support to achieve learning outcomes'.

In our study, parents expressed to the Commission a wide range of views about the quality of ILPs.⁵⁰⁷ Some felt they were very good while others were extremely concerned about the capacity of teachers and others in the school to develop and implement these plans:⁵⁰⁸

The plan has not changed much since first starting at the school as my child has not made much improvement from year to year. The plan is usually rolled over to the next school year, I have a PSG meeting with the teachers but the plan is usually already typed out and ready for me to sign.⁵⁰⁹

They did listen and list our suggestions in the IEP. But it has been hard following through on some of those things due to limited resources and time on the part of the teacher and aides, and lack of experience on their part.⁵¹⁰

The teacher prepared an 'individual class plan' for my child based on what she observed in the classroom not on my child's disability. I don't blame the teacher. How can she develop a plan if she is untrained to recognise the symptoms and therefore cater for my child's learning needs?⁵¹¹

Some felt the only reason the ILP was done was to secure funding:

The staff at the school provide goals that are not individualised, are not negotiated with us, and do not reflect our child's needs. The school verbalise that the purpose of the goals is to account for funding. They do not see them as a tool to support our child's learning.⁵¹²

In some cases parents reported disengaging from the process altogether:

To assist I furnished the school with extensive language and cognitive reports which I had already obtained privately from a speech pathologist and a paediatric psychologist at great expense. I also provided a template and model individual learning plan from the Ed Dept website. Some weeks later the school emailed me a brief document that did not remotely fit the basic requirements for an individual learning plan. It had no obligations, timelines, and ways to measure what was to be achieved and so on. Promises of further meetings – e.g. head teachers bumping into me in the corridor and saying they would ring to arrange a proper review – never eventuated. I have ceased to insist on further meetings or plans, because they will most likely be a sham.⁵¹³

506 Parent survey participant.

507 The Commission notes that detailed guidance on developing and implementing an individual learning plan is provided by the DEECD however, take up among schools appears inconsistent. In some cases schools exceed the guidance.

508 Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, vii.

509 Parent of student attending a government specialist school. Parent survey participant.

510 Parent of student attending a government mainstream school. Parent survey participant.

511 Parent of student attending a government mainstream school. Parent survey participant.

512 Parent of student attending a government mainstream school. Parent survey participant.

513 Parent of student attending a government mainstream school. Parent survey participant.

Inconsistency of implementation

Some parents described a flurry of activity to develop the ILP as part of the PSD funding application but, following that, implementation of the plan falls away:

I was consulted (when he was about to start year 7) but there has been no further plans provided to me and my son is now going into year 9.⁵¹⁴

Initially, he entered this school with a full transition plan and lots of meetings between myself and the school special ed. team. This boded well, but no individual learning plans at all were put into in place, and after seven months of heartbreak, they were finally initiated ... The problem lies in the transition from one year level to the next. Each new teacher must be convinced that it is necessary. Then the slow process begins, and it is usually about second or third term by the time that the plan is in place. The teachers should be in-serviced at the commencement of the year, but this rarely happens. The worst is when replacement or temporary teachers are used – the children with difficulties are ignored.⁵¹⁵

Failure to review and update plans

Parents and educators in 'have a say' days throughout Victoria reported ILPs not being reviewed or updated, in some cases for years.⁵¹⁶ Similar comments were made in the parent survey:

We have had consistent term meetings with her support team (principal, special-ed co-ordinator, teacher and aide). Goals have been set from day one, however, they have not changed very much over 7 years. This is due in part to our daughter's progress, but also due to staff not necessarily looking for new goals as well.⁵¹⁷

Others felt the ILP paid lip service to the students' needs as it was not followed through:

Great to have a plan – but it's not much use if the teachers never see it.⁵¹⁸

I believe the plan is just a formality/paperwork to obtain funding. Each year the plan looks the same like it is a cut and paste job from the previous year's plan.⁵¹⁹

I have to write it up myself every SSG meeting and hand it out as they always lose the last one I gave them.⁵²⁰

Goals get set but are very generalised, often incorporating more than one goal in the sentence. There are no short-term goals to help assist reaching the long-term goal. Goals are not reviewed regularly, and not reviewed with parents.⁵²¹

Accountability for results in the plan

Some parents also expressed concern at not being informed of their child's progress at school:

I was surprised to receive a not satisfactory result at the end of year 11, as I was not informed that my child was not performing adequately.⁵²²

I found out that he was failing maths in the first week of the last term.⁵²³

Other parents raised concerns about what they viewed as a lack of accountability on behalf of the school for implementation of the plan:

I was consulted in the development, however have found over the years it is a process, the school is not really answerable to it. They just say he is moving at his own pace. There is again no accountability to outcomes.⁵²⁴

It looks great on paper but lack of implementation, assessment and reporting make it almost meaningless.⁵²⁵

Meeting held, student also involved, all written up, realistic goals. All looked good on paper but nothing followed through.⁵²⁶

519 Parent of student attending a Catholic school. Parent survey participant.

520 Parent of student attending a government mainstream school. Parent survey participant.

521 Parent survey participant.

522 Parent of student attending a government specialist school. Parent survey participant.

523 Parent of student attending a government mainstream school. Parent survey participant.

524 Parent of student attending a government mainstream school. Parent survey participant.

525 Parent of student attending a government mainstream school. Parent survey participant.

526 Parent of student attending a Catholic school. Parent survey participant.

514 Parent of student attending a government mainstream school. Parent survey participant.

515 Parent of student attending a Catholic school. Parent survey participant.

516 See e.g. HASD 3 and 13.

517 Parent of student attending a Catholic school. Parent survey participant.

518 Parent survey participant.

However, some parents felt the level of accountability was high or was improving:

Initially we had a poor experience with this, but the school has come a long way. We now have a SMART plan [specific measurable attainable realistic and timely], with accountabilities in place and she is excelling with the tasks she is set.⁵²⁷

Others thought some form of external review would help improve the quality of the plan and the results that could be achieved:

The school designed the ILP and provided the parents with some review opportunity. However, when we attempted to get an external expert to review the program (at our cost) the school refused to permit such a review arguing that they were the experts and it was an education department matter to provide curriculum content. We remain dissatisfied with this outcome. Our daughter will be in year 9 in 2012, so perhaps it is not too late to get a better outcome.⁵²⁸

The Commission notes that government schools are currently required to report on the number of students eligible for PSD funding who do not have an ILP in place. This forms part of the Supplementary Schools Census. Schools must also report on the percentage of PSD students who are meeting the learning, independence, engagement and participation goals in the ILP.⁵²⁹

However, this self-assessment by the school does not report on outcomes for individual students. Thus, 'there is no systematic auditing of ILPs at the moment other than the initial submission of the goal and strategies'.⁵³⁰

Opportunities for improvement

The educational outcomes of students with special learning needs are potentially being compromised by inconsistent, poor quality ILPs.⁵³¹

While ILPs 'are the backbone of planning for the teaching of students', not all staff know how to write an effective plan or have access to expertise within the school to guide them. Some appear unaware of their obligation to prepare one. This is unacceptable.⁵³²

527 Parent of student attending a Catholic school. Parent survey participant.

528 Parent of student attending a government mainstream school. Parent survey participant.

529 Accountability for PSD funds is discussed in Chapter 14.

530 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

531 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 26.

532 Submission 2, Julie Phillips, Disability Advocate 5.

Suggestions from parents and organisations included having dedicated staff with extensive training in developing and implementing adjustments to support the development of ILPs, along with a stronger oversight role by DEECD to make sure plans are of a high quality, are implemented in practice and reviewed regularly.

These suggestions often went hand-in-hand with maximising the potential of SSGs, in particular by promoting greater involvement of specialists, such as occupational, speech and other therapists, in these meetings.

To truly meet the needs of dyslexic children, there should be one member of staff in each school who has received extensive dyslexia training and is capable of writing individual learning programmes for students. All teachers should know what dyslexia is, how to recognise it and how to teach dyslexic children.⁵³³

Educators spoke of developing ILPs that draw on good research models and the importance of a whole-of-school approach to professional development on establishing and implementing ILPs.⁵³⁴ Parents also suggested the value of providing training for teachers so that ILPs were meaningful and put into practice:

If schools cannot write an individual learning plan then DEECD should step in. Plans need to be measurable in terms of positive student learning outcomes rather than 'Mary will go on camp'.⁵³⁵

Clearly, educators want to deliver the best outcomes they can for their students. To do this, they need the appropriate tools. For this to happen, they need to be trained and supported to develop and implement ILPs and schools must be publicly accountable.

It was suggested that ILPs be submitted to DEECD online to make sure that schools are compliant each term by a certain date.⁵³⁶ Potentially, the regional disability coordinator could then check that every student in receipt of PSD funding had an SSG and an ILP in place.

Online submission and storage would also have the advantage of allowing school principals, teachers and parents to check the content and progress of plans quickly and easily. It could also open up the opportunity for the regional director to conduct random reviews of ILPs to be sure that their quality is of the required standard.

533 Case study 15.

534 HASD 5.

535 Case study 8.

536 Parent survey participant.

Recommendations

Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

15. Individual learning plans be mandatory for students whose disability affects their education regardless of whether they are eligible for targeted funding.
16. Educational authorities, at a regional or diocese level undertake a review of a random sample of individual learning plans (and student support group records) to ensure these are of a satisfactory standard and are achieving educational outcomes for the student. Further, that the Victorian Registration and Qualifications Authority inspect a similar random sample as part of the cyclical review of Independent schools and require the same in government and Catholic school reviews.

Chapter 9: School attendance patterns of students with disabilities

Main findings

- Even though the law requires all students who are enrolled to attend school full-time, some schools do not allow some students with disabilities to come to school full-time. This is discrimination.
- In some cases, students are only allowed to attend during the hours that a funded integration aide is available. In other cases, the student may be put on part-time attendance following behaviour problems that have not been well-managed.
- While part-time schooling is forced on a small number of students, it is a serious matter that the Department of Education and Early Childhood Development (DEECD) must proactively address.
- Although our study found that some students with disabilities are suspended multiple times, nearly always in connection with behaviour-related issues, there is no way to verify if students with disabilities are over-represented among students who are suspended or expelled as DEECD does not collect or analyse this data. This information is also not available from the Catholic or Independent school sectors. This is a significant information gap that hinders opportunities to understand and address the problem.

Patterns of attendance

In the Commission's survey, 596 parents indicated the current attendance pattern of their child with disability at school.

- 509 (85.4 per cent) reported that their child attended school full-time
- 54 (9.1 per cent) reported that their child attended school part-time

- 33 (5.5 per cent) reported that their child was either home-schooled, undertook distance education or was dual enrolled.⁵³⁷

When asked how this pattern of attendance came about:

- just over half (50.6 per cent) of parents said it was agreed between the parents and the school
- 27 parents (31 per cent) chose this arrangement
- 16 parents (18.4 per cent) reported that the school required it.⁵³⁸

Home-schooling and distance education

The survey of parents revealed only 12 instances of home schooling and four instances of distance education for students with disabilities. A small number of instances of these types of education were also raised in case studies and through 'have a say' sessions with parents.⁵³⁹

Educators were asked how common it is for students with disabilities to receive home-schooling. The majority (62.3 per cent) said home-schooling was rare; however, 12.8 per cent (110 educators) described it as occasional and a further 2.6 per cent (22) said home-schooling was common or very common.⁵⁴⁰ This pattern was broadly similar across all school sectors, with a slightly higher proportion of government specialist school educators reporting home-schooling as occasional.⁵⁴¹

⁵³⁷ Seventeen were dual enrolled, 12 were home-schooled and four undertook distance education.

⁵³⁸ Only parents of children with non-full-time attendance were asked this question – 87 parents responded.

⁵³⁹ See e.g. HASD 1.

⁵⁴⁰ 535 educators said home schooling was rare. Parents must register with the Victorian Registration and Qualifications Authority.

⁵⁴¹ 16.6 per cent of government specialist school educators reported home-schooling as occasional compared to 12.8 per cent of all educators.

Educators were also asked about trends in distance education for students with disabilities. Almost 40 per cent answered that they did not know. Only nine educators described it as common or very common and a further 59 described distance education as occasional. In contrast, 448 educators said it was rare.⁵⁴²

Home-schooling or distance education may be chosen by the parent or student or it may arise following suspension or expulsion.⁵⁴³ In some cases, it was reported that students are fearful of returning to school because of bullying. In other cases, it was reported that the school may suggest home-schooling as a response to bullying and the parent followed that advice.⁵⁴⁴

[It became quite obvious] ... that his needs were not going to be met, so in the end with the support of our case manager at DHS we were left with very little choice but to take him out of the school situation, be 'deemed' enrolled and not attend for 12 months ... We have recently been left to enrol him in homeschooling and somehow find the time to educate him at home and work through what in reality the education system should be doing.⁵⁴⁵

He spent more time at home in Year 7 than at school ... by June of Year 7 he was home full-time. He attempted to complete a distance education program but was eventually cut from the program. It took to the end of Year 8 for the family to find a school with the assistance of CAMHS.⁵⁴⁶

The culturally and linguistically diverse (CALD) critical friends group suggested there might be a high proportion of CALD students with disabilities who are not at school. The group said that this could reflect problems accessing transport, but also suggested that this could reflect a belief in some families that the child is better off learning at home, either through physical work or work around the home. There was disagreement in the group over whether this mainly affected male or female teenagers.⁵⁴⁷

542 50.7 per cent said it was rare, 6.6 per cent said it was occasional, one per cent said it was common or very common, 41.5 per cent did not know or did not answer.

543 See e.g. case study 34 where the student was suspended multiple times, was then placed on a two day per week attendance and eventually did distance education.

544 See e.g. phone-in 51.

545 Parent of student now home-schooled. Parent survey participant.

546 Child and Adolescent Mental Health Service (CAMHS).

547 CALD critical friends group.

Dual enrolment

In some circumstances, students with disabilities may attend more than one school. This is a parent choice. For example, they may attend a specialist school for a number of days per week and a mainstream school for the remainder, therefore being enrolled in school full-time. In our survey, parents reported 17 dual enrolments.

Dual enrolment was more frequently mentioned in 'have a say' day discussions, particularly among parents of children with intellectual disability.

- 405 educators surveyed said that dual enrolment was occasional (46.9 per cent)
- 250 educators said it was rare (29 per cent)
- 105 said it was common (12.2 per cent)
- 18 educators surveyed said that dual enrolment was very common (2.1 per cent).⁵⁴⁸

Part-time attendance

In Victoria, enrolled students are generally expected to attend school full-time.⁵⁴⁹ However, the Commission found that this is not always the case for students with disabilities. Similar, national findings were made in the *Report on the Review of Disability Standards for Education 2005*.⁵⁵⁰

548 Eighty-five educators (9.9 per cent) did not know.

549 In Victoria, education is compulsory for children aged between 6 and 17 years. Students are expected to attend normal school hours (between 9 am and 3.30 pm) every school day of each term. *Education and Training Reform Act 2006* (Vic) s 2.1.1. Access to education free from discrimination is also protected by section 8 of the Charter (equality before the law). The right to education is also protected by international laws including the *Convention on the Rights of the Child*; *Convention on the Rights of Persons with Disabilities* and the *Convention on Economic, Social and Cultural Rights*.

550 'Consultation about adjustments was often limited and one-sided – a 'take it or leave it' approach. In some cases, parents were not consulted until issues became critical, resulting in suspension or exclusion of students with disability. A number of submissions reported that students with disability may only be offered part day/part week attendance as a result of 'inadequate resources or limited access to support staff'. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 42.

While home-schooling, distance education and dual enrolments are all authorised, part-time attendance when a student is enrolled full-time is a clear breach of departmental policy and of Victorian law, apart from exceptional circumstances prescribed in DEECD's *Student Engagement Policy Guidelines*.⁵⁵¹

Within our survey sample, however, one in 10 students with disabilities attending government mainstream schools were not attending school full-time.⁵⁵²

Fifty-two parents reported that their child attended school part-time. Of these:

- 39 students attending part-time were enrolled at state mainstream schools⁵⁵³
- six were enrolled at government specialist schools⁵⁵⁴
- three were enrolled in Catholic mainstream schools⁵⁵⁵
- four were enrolled in Independent schools, of which one was an Independent specialist school.⁵⁵⁶

The Commission also heard reports of significant part-time attendance patterns among Indigenous students with disabilities in at least one regional centre. In addition, the Victorian Aboriginal Disability Network reported part-time schooling and high rates of suspensions and expulsions:

We have 80 children going to school at 10 to 11.30 am, three days a week, at the Catholic School, having been expelled from the government school ... Also at the primary schools children with disability are not being catered for. They are being expelled or only allowed to attend two or three hours a day, including lunch.⁵⁵⁷

551 For more information about attendance policy and procedures see: State of Victoria, Department of Education and Early Childhood Development, School Policy and Advisory Guide: Student Participation: Attendance <www.education.vic.gov.au/management/governance/spag/participation/attendance/default.htm> at 25 June 2012.

552 Of 359 parents of students in government mainstream schools, 39 had children attending part-time. Of 100 parents of students in government specialist schools, six had children attending part-time.

553 Of these, six parents had chosen to have the child attend part-time, 23 had agreed this attendance pattern with the school. In 10 cases, the school had required part-time attendance.

554 Four parents had chosen this. In two cases, the school required part-time attendance.

555 In all three cases, the school and parents had agreed this arrangement.

556 Two parents chose this, one agreed with the school and the other part-time attendance was required by the school.

557 HASD 11.

The problem is that if students are only attending school a few hours a day they have very little chance of catching up on missed learning opportunities.

The Commission also notes the findings of the Victorian Auditor-General that 'mainstream schools and regional offices reported that they encourage part time attendance for some students through what they term 'flexible learning'. In these cases, students were not given any alternative educational provision for the time they were not present at school'.⁵⁵⁸

Educators in our survey were asked how common it is for students with disabilities to attend school on a part-time basis. Their answers suggest that part-time attendance is as frequent as that suggested in the parent survey data.

Just over 40 per cent of educators reported part-time attendance as rare. However, one in eight educators described it as common.⁵⁵⁹

- 362 educators (41.8 per cent) reported part-time attendance as rare
- 324 educators (37.4 per cent) said it was occasional
- 106 educators (12.2 per cent) described it as common
- 34 educators (3.9 per cent) said it was very common.⁵⁶⁰

These rates were broadly similar across all sectors.

558 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 28.

559 This excludes dual enrolments, home-schooling and distance education.

560 Forty educators (4.6 per cent) did not know.

Causes of part-time attendance

The drivers of part-time attendance are complex and interrelated. However, a common underlying factor appears to be that the school is unable to make the necessary adjustments to facilitate the full-time attendance of a student with disability. This may relate to funding or other capacity constraints, including lack of professional support for educators, attitudinal barriers and knowledge deficits about working with students with different forms of disability, as well as a failure to adopt behaviour management strategies.

Failure to make adjustments

For some parents, their child's part-time hours were a result of the school being unable to provide adequate support for the child to attend full time in the first place:

I wanted my child to attend an Independent school but there were none who could meet his complex needs. I tried to get him into a local mainstream school but again there were none of which could meet his needs. I tried to do a split enrolment between the specialist school and the local mainstream primary school but several of the local schools did not want to enrol him. In the end, we found a local school that would allow him to attend as a visitor one day a week. He is not enrolled and, as such, there is no support for him in the school. I am his full time carer while he is at the school.⁵⁶¹

For others, part-time attendance resulted after many years effort to get effective support in place at the school but without success:

My daughter is now 17. She has ASD. She attended mainstream school all her life – now in a part-time capacity. She attends part-time because of the inability of schools to modify curriculum around her needs. At the outset, I should say the schools did lots of things well, but there are a lot of problems as well ... every year I have to justify why she is not at a special school. I am over it.⁵⁶²

Relationship to funding

In a few cases, parents and advocates told the Commission that part-time schooling arrangements were tied to a lack of funding. We were told that some schools would only allow a student to attend for the hours and days where support – typically an integration aide – was funded and available. Other parents chose part-time hours as they felt a full-time aide was necessary for their child's participation; however, this was not provided.⁵⁶³

My son was only allowed to attend 6–8 hours a week [because] that's all the aide funding he could get and after I sold my car and furniture I couldn't continue funding extra aide time.⁵⁶⁴

My child has critical safety needs and was only given enough funding for an integration aide for three hours a day. We want to use this in the key learning hours of the day. However, we are yet to work out [how] to manage her safety at lunchtime. For this reason, she is still only doing half days while the rest of the class attend full-time.⁵⁶⁵

In some cases, community service organisations are asked to, and pay for, essential supports so that the student with disability can attend school.⁵⁶⁶

Relationship to suspension and expulsion

Part-time attendance may also be a consequence of a breakdown in schooling; for example, where behavioural or other issues, which themselves may result from not making adequate adjustments to accommodate the student's disability, have led to suspension or expulsion.⁵⁶⁷

My child's school would forget to medicate him, and when he displayed autistic behaviours would punish him by suspension. I would take him to school at 9am and regularly a teacher would drop him home by 9.30am. Sometimes they would tell my child they were taking him home to collect his bike. At the house, he would run in to get his bike and they would drive off leaving me to deal with the emotional aftermath.⁵⁶⁸

563 See also Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 49; and Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 28.

564 Parent survey participant.

565 Parent of student attending a government mainstream school part-time. Parent survey participant.

566 See e.g. HASD 6.

567 See e.g. Case study 34.

568 Parent survey participant.

561 Parent of student attending a government mainstream school part-time. Parent survey participant.

562 Case study 36.

In limited circumstances part-time attendance may be included in a student's individual learning plan (ILP). The department told the Commission 'this may reflect some specific circumstances and the individual needs of the child, but must be of time-limited duration with very clear goals and strategies to ensure full time attendance is achieved'.⁵⁶⁹

However, currently there is no official data on how often part-time attendance is used as part of a graduated return to school and there is no systematic monitoring of ILPs at a regional or central level when these arrangements are in place.⁵⁷⁰

At my school, suspensions are not considered at all for any student. There is regional advice and strict guidelines around official suspension. We also do not expel students. At times where behavioural or emotional matters are severely impacting on the state of the student (with or without disabilities) and or on the safety and wellbeing of other students, the school with the advice often of student support officers will enter into short day arrangements for specific students. This strategy aims to ensure that success comes from the shortened attendance and confidence builds stronger engagement. There are always student support group meetings and agreed and negotiated arrangements when this strategy is used. It is always a short-term plan with an aim to steadily increase attendance opportunities. This strategy is more often used for students who are NOT supported under the PSD, those who may have the presentation and forms of behaviour disorder or other (such as Reactive Attachment Disorder or behavioural anxieties but rarely aspects of ASD, ASHD and students who are officially diagnosed with disorders.) Where a student has complex needs or whose parents have not sought advice or followed through with diagnosis or who do not fit the criteria of disability under the PSD, this strategy is often a strong strategy to enable the student to start small with a single goal improvement focus.⁵⁷¹

At our school students with major behavioural issues, and funded as such, are not suspended or expelled, however at times some of these students may have a modified program that helps the child participate to their best capacity. This can vary from a 'day off' or modified times at school for a period of time. The decision is always aimed at being in the best interest of the child.⁵⁷²

569 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

570 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

571 Classroom teacher, government mainstream school, Educator survey participant.

572 Classroom teacher, government mainstream school. Educator survey participant.

Suspension of students with disabilities

Departmental policy on suspension

DEECD has issued specific guidance to schools on the use of suspension in the *Effective Schools and Engaging Schools: Student Engagement Policy Guidelines*, which states that schools should only use suspension when all other strategies have failed and for the shortest time necessary.⁵⁷³

These guidelines aim to 'promote student engagement, attendance and positive behaviours in Victorian government schools'. They require all schools to develop a Student Engagement Policy that 'articulates the school community's shared expectations in the areas of student engagement, attendance and behaviour'.⁵⁷⁴

The guidelines include detailed advice to schools on promoting positive behaviour and engagement, consulting with students and parents, and implementing prevention and early intervention strategies to promote positive behaviours at an individual and whole-of-school level. Information is also provided regarding obligations under the federal *Disability Discrimination Act 1992*, the *Equal Opportunity Act 2010* and the *Charter of Human Rights and Responsibilities Act 2006*. Among other things, templates and pro forma for ILPs, return to school plans, notices and reports of suspensions are included in the guidelines.⁵⁷⁵

573 Department of Education and Early Childhood Development, 'Student Engagement Policy Guidelines', above n 434, 25.

574 Ibid.

575 Information for parents on procedures for suspension and expulsion is also translated into community languages.

The guidelines also set out grounds for suspension. These include where a student is engaged in, or travelling to or from any school activity:

- is violent or threatens the health, safety of wellbeing of another person
- causes damage or destruction to property, or is involved in theft
- possesses, uses or assists another person to use prohibited drugs or substances
- fails to comply with any reasonable, clearly communicated instruction
- consistently interferes with the wellbeing, safety or educational opportunities of another student
- consistently vilifies, defames, degrades or humiliates another person based on any personal attribute protected by law (for example, race).⁵⁷⁶

The guidelines describe the suspension process. The school principal is required to follow the school's own engagement policy, to ensure that suspension is the appropriate response and to convene a student support group meeting (SSG) with the student's parents to explain the suspension and to put in place a student absence learning plan. Before the suspension begins, the principal must provide a notice of suspension to the parents and to the president of the school council that includes, among other things, the reasons for the suspension. The principal must also give the parents a DEECD brochure on 'procedures for suspension'. The guidelines does not specify that the SSG meeting has the purpose of determining whether a suspension is appropriate but does require the principal to set out previous actions to support the student, including previous SSG meetings.⁵⁷⁷

DEECD's guidance on suspensions forms part of an overarching policy called *Effective Schools and Engaging Schools: Student Engagement Policy Guidelines*. A key component of the Guidelines is

Ministerial Order 184, *Procedures for Suspension and Expulsion*.⁵⁷⁸ This limits the maximum length of a suspension to five days. It also limits the maximum number of school days a student can be suspended in a school year to 15 days. The ministerial order states that suspensions must conclude at the end of school term and not continue into the following term.

If a student is suspended for the maximum of 15 days then 'an expulsion is not the automatic consequence'. Where a student has been suspended for eight days in a school year, or has reached a total of four individual suspensions in a school year, the school principal must consult the regional office to address the behavioural concerns for the suspended student. If it is proposed that a student be suspended for more than 15 days in the year, approval must be sought from the regional director.⁵⁷⁹

How common is suspension of students with disabilities?

Currently there is no systemic data available on the specific rate or number of suspensions of students with a disabilities in Victorian schools.⁵⁸⁰ DEECD is not able to collect and therefore does not publish suspension or expulsion data either at a statewide or regional level.⁵⁸¹ This data is also not available from the Catholic system or Independent school sector.⁵⁸²

This makes it impossible to determine if students with disabilities are over-represented among students who are suspended or expelled or to identify any other trends in the causes and consequences of this form of punishment.

After receiving anecdotal reports that students with disabilities are more likely to be removed from school on either a temporary or permanent basis, the Commission included questions on this topic in our survey.

578 Victorian Government, Procedures for suspension and expulsion, Ministerial Order no. 184, 1 July 2009, <http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/segministerorder.pdf> at 26 June 2012.

579 Ibid.

580 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

581 Suspensions and expulsions data for students in receipt of Program for Students with Disabilities funding is not recorded or reported. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

582 Key informant interview, Catholic Education Office Melbourne; key informant interview, Independent Schools Victoria.

576 State of Victoria, Department of Education and Early Childhood Development, Student Participation: Student Policy and Advisory Guide, Expulsions (2011) <http://www.education.vic.gov.au/management/governance/spag/participation/engagement/expulsions.htm> at 26 June 2012.

577 As required by the Department of Education and Early Childhood Development, 'Student Engagement Policy Guidelines', above n 434, 27.

Survey responses suggest that suspension and expulsion appear to be the exception rather than the norm, with 84.8 per cent of parents reporting that their child had never been suspended.⁵⁸³ However, in the absence of comparative data for the student population as a whole, it is not possible to determine if this rate is better or worse than that for the general school population.

Most educators (59.5 per cent) believed suspension and expulsion is rare. However, a significant number (239) reported that suspension is occasional (27.7 per cent) or common (7.2 per cent).⁵⁸⁴ This pattern was broadly similar across educators from all school sectors.

Multiple suspensions

While it is positive that the use of suspension and expulsion appears to be infrequent, it is of concern that our survey revealed a small number of students with disabilities who have been suspended multiple times.

Of the 90 students that parents in our survey reported as having been suspended:

- 32 students had been suspended once.⁵⁸⁵
- 28 students had been suspended more than once.⁵⁸⁶
- 30 students had been suspended more than five times.⁵⁸⁷

Parents also reported patterns of frequent and multiple suspensions in 'have a say' day sessions, during the phone-in and in case studies.⁵⁸⁸

583 502 parents reported no suspensions. 84.9 per cent of parents in government mainstream schools reported that their child had never been suspended. This compares to 89 per cent of parents in government specialist schools, 95 per cent of parents in Catholic mainstream schools, 77.6 per cent of parents in Independent schools and 36.4 per cent of Independent specialist schools; however, the survey participation rate of Independent specialist schools is very low and so data should be treated with caution.

584 Twenty-nine educators (3.4 per cent) did not know. Nineteen educators (2.2 per cent) said suspension of students with disabilities was very common.

585 Of these, 18 were from state mainstream schools, six were from government specialist schools, two were from Catholic schools. Two were from Independent schools. One did not identify the type of school.

586 Of these, 20 were from government mainstream schools, two were from government specialist schools and four were from Independent schools.

587 Of these, 16 were from government mainstream schools, three were from government specialist schools and one was from a Catholic school. Five were from Independent schools.

588 See e.g. HASD 11, Case studies 3, 11, 18 and 34. See also phone-in 1 and 10.

Internal suspensions

In some instances, parents reported 'internal suspensions' or their child being sent home without a formal suspension:

My child was not suspended as such but was placed in a day-long time out, this was before her formal autism assessment was done, and it was due to the fact that she had been disruptive to the class, was sat under her chair and refused to come out and then once removed, refused to return to the classroom.⁵⁸⁹

He has been sent home numerous times without suspension, when he has had a full blown meltdown, just so he is able to calm down enough to understand that his aggressive behaviour is not acceptable. I have often been called to come to the school. This makes it very difficult for me to return to the workforce, which is something I really need to do.⁵⁹⁰

589 Parent of student attending a government mainstream school. Parent survey participant.

590 Parent of student attending a government mainstream school. Parent survey participant.

Expulsion

Departmental policy on expulsion

DEECD has issued specific guidance to schools on expulsion in the *School Policy and Advisory Guide*, which states that principals must:

- ensure expulsion is a measure of last resort
- ensure all other reasonable measures to avoid expulsion have been implemented, as consistent with the advice around staged response in the Effective Schools are *Engaging Schools: Student Engagement Policy Guidelines*
- determine that expulsion is appropriate to the student's age, behaviour, educational needs, residential and social circumstances, and additional learning needs or disability.⁵⁹¹

If a decision is made to expel a student, the principal must demonstrate that it 'is the only remaining measure and that all other measures have been implemented in good faith without success'. He or she must also 'ensure, with support from the regional director, that an expelled student of compulsory school age is enrolled at another school or a registered training organisation'.⁵⁹²

While an expulsion can be made on the same grounds as those of suspension, the magnitude of the student's behaviour 'outweighs the need of the student to receive an education when compared to the need to maintain the health, safety and wellbeing of other staff and students at the school and the effectiveness of the school's educational programs'.⁵⁹³

The process for an expulsion is broadly similar to that for suspension. However, additional checks and balances are included. These include formal notice periods for the issuing of a notice of expulsion; that the regional director is notified when the SSG is convened; the right of the student and parent to be heard at the SSG meeting; and mandatory reporting of the expulsion to the regional director within 24 hours of the expulsion taking place.⁵⁹⁴

Ministerial Order 184 *Procedures for Suspension and Expulsion* provides further guidance, including details of the appeals process.⁵⁹⁵ Detailed guidance is also provided for educators in the *Student Engagement Guidelines*, which include, among other things, pro forma notices and reports for expulsions and a 'procedure for expulsions' brochure to be provided to students and parents.⁵⁹⁶

591 Department of Education and Early Childhood Development, 'School Policy and Advisory Guide, expulsions' above n 576.

592 Ibid.

593 Ibid.

594 Ibid.

595 Department of Education and Early Childhood Development, 'Ministerial Order no. 184', above n 578.

596 The procedure for expulsions brochure is translated into community languages.

Experiences of parents and students

In our survey, 23 parents reported that their child had been expelled (close to four per cent).⁵⁹⁷ Ten students (17 per cent) reported being suspended or expelled.

Some parents told us that they withdrew their child before a formal expulsion took place. Others spoke of multiple expulsions:

Due to the staff's lack of expertise, the focus was on my son's behaviours and not the cause. There was no interest in finding out why. Basically schools just wanted him out – too hard.⁵⁹⁸

At the time we withdrew our son from the secondary school, the school was planning to expel him. We got in first and left the school. Which resulted in the school having a melt down and stating we could not do this. We responded by telling them we could do this, we have done this and to escort us to his locker so we could retrieve his belongings.⁵⁹⁹

He has been asked to leave every school he has attended.⁶⁰⁰

A student reported:

I was overwhelmed by an unfortunate misunderstanding and I had a physical reaction to a teacher and was expelled. I spent two and a half terms at home because I was so distressed I couldn't attend school.⁶⁰¹

Educators' experiences of suspension and expulsion

Educators who participated in our survey said the reasons for suspending or expelling students with disabilities were nearly always associated with issues concerning the students' behaviour. Actual or risk of harm to self and others was most often mentioned.

- 363 educators (41.1 per cent) referred to actual or threatened violence, property damage, and risk of harm to self or others or (including sexualised behaviours in a few instances).

- 87 educators (9.9 per cent) referred to behavioural issues generally, not conforming with school rules, disrupting the class or not following instructions.
- 38 educators (4.3 per cent) referred to antisocial, uncontrollable or aggressive behaviours.
- 24 educators specifically referred to repeated incidents or behaviours of concern.

Twelve per cent of educators (105) stated that suspension or expulsion never or rarely occurs.

Some educators described suspending or expelling students as a last resort. In other cases, in-house suspensions, temporary or longer-term short day, part-time and off-site arrangements were reported as alternatives to formal suspension. Others spoke of putting in place positive behaviour plans and detailed strategies to manage the causes of behaviour. Others mentioned student safety plans and restorative approaches. Several mentioned that suspensions are accompanied by return-to-school plans:

Students with disability are usually managed differently with a lot of time put into understanding how to avoid a similar situation. Managing them differently causes some controversy amongst staff who believe there should be one rule for all.⁶⁰²

I don't suspend or expel students. The student may present with concerning behaviours but we try and work as a team with the family to support the student. We look for other ways to give the student and staff a break from each other if that is what is needed.⁶⁰³

Not so much as suspended or expelled but more about asking the parents/carers to keep the child home where the behaviour is disrupting the learning of others or having an emotional impact on staff/students ...⁶⁰⁴

Other educators articulated concerns about occupational health and safety and their duty of care to other students and staff. Some described suspension as part of a continuum of actions around managing behaviour as part of a policy of 'zero tolerance' towards violence.

⁵⁹⁷ Twenty-three parents out of 582 parents who responded to this question. Of these, 23 expulsions, 11 were from state mainstream schools, four were from government specialist schools, six from Independent schools and one from a Catholic school.

⁵⁹⁸ Parent survey participant.

⁵⁹⁹ Parent survey participant.

⁶⁰⁰ Parent survey participant.

⁶⁰¹ Student, government mainstream school. Student survey participant.

⁶⁰² Educator survey participant.

⁶⁰³ Principal, government specialist school. Educator survey participant.

⁶⁰⁴ Principal, government mainstream school. Educator survey participant.

Suspension is usually as a result of physical fights with other students. Our discipline and behaviour management plans contain a number of steps and flexibility to give students more chances to change their behaviour and avoid suspension. Physical violence results in automatic suspension for all students, regardless of disability.⁶⁰⁵

Students diagnosed with conditions such as ADHD but who don't receive any funding support who commit acts of violence against other children have been suspended for periods of a day to (a) attempt to make the point to them that there are consequences for acts of violence and (b) other students see that there are consequences and that violence is unacceptable. Such suspensions might happen a maximum of four times a year in a student population of 450.⁶⁰⁶

A few teachers noted that frustration leading to poor behaviour was aggravated in settings where adequate disability supports were not available due to funding or other resource constraints:

Students get into trouble due to frustrating interactions with other students which causes them to lash out. This is compounded when there is limited presence of integration aides to help diffuse such situations.⁶⁰⁷

As a parent of a special needs child and school principal, I understand the significance of equal opportunity and basic human rights but sometimes we feel we are put into situations of reverse discrimination. All students have the right to learn in a safe and secure classroom environment, this includes the more abled. A severe lack of resources, physical facilities and teacher/student ratio to be able to support special needs students is placing unhealthy levels of stress on staff/parents/carers alike. Integration is a fantastic initiative, funding however is not keeping pace with increased numbers and needs of special needs students, especially in the poorer areas...⁶⁰⁸

Others were more optimistic in the face of lack of resources and support:

We don't expel or suspend students. We support them. We don't really have the resources to do so (tangible resources or personnel) but we do our best.⁶⁰⁹

Reasons for suspension or expulsion – parent and student perspectives

In common with educators, parents and students who spoke about instances of suspension or expulsion said these tended to arise from behavioural issues. For parents, however, the use of suspension was more often described as symptomatic of the school not responding appropriately to the needs of their child:

My son was suspended due to behaviour, outburst, verbal and physical aggression. He was rarely supported in the appropriate ways, there was no real assistance or strategies offered and he would have meltdowns and then be sent out of the class or sent home. The school could see some of the triggers but did nothing to prevent them, stating they had no funding or resources.⁶¹⁰

The school made little allowance for my son to communicate through facilitated communication with aides and other staff. He felt extremely alienated as facilitated communication was his preferred method of communication because he is non-verbal. Frustration and feelings of anxiety resulted in a spate of antisocial behaviour such as throwing objects at classmates and aides. Suspension resulted from these behaviours but the school did not address the issue adequately. This has improved since facilitated communication has been accepted after lengthy negotiation with the school, and aides were able to support his typing.⁶¹¹

My child was suspended over 20 times in primary school. I was being called to the office almost on a daily basis for minor behaviour through to complete shut downs and at these points my child had become non-communicative. Since attending ... secondary school, my child has never been suspended and is having a vastly different experience. This I believe is due to the understanding and education the secondary school has in educating children with a disability ... My child has moved forward in both his academic levels and his social interactions.⁶¹²

605 Specialist support provider, government mainstream school. Educator survey participant.

606 School principal, government mainstream school. Educator survey participant.

607 Classroom teacher, government mainstream school. Educator survey participant.

608 Educator survey participant.

609 Classroom teacher, government mainstream school. Educator survey participant.

610 Parent of student attending a government mainstream school. Parent survey participant.

611 Parent of student attending a government mainstream school. Parent survey participant.

612 Parent of student attending a government mainstream school. Parent survey participant.

Relationship with bullying

Parents and students reported suspensions that followed incidents where they believed the student with disability was responding to bullying or unfair treatment by others.⁶¹³

I was fighting a boy and I can't remember but I think he was teasing me.⁶¹⁴

I get very angry when they don't believe me that I am unwell and I have sometimes sworn at the teachers.⁶¹⁵

Children would bully him and the school would not act on his complaints and they would say it was because they did not see it happen ... My son could not take it anymore and would react and hit out and he was expelled from two schools for this reason. The schools felt it was easier to expel him than deal with the group of bullies who surrounded and kicked my son ...⁶¹⁶

After being in situations that increased my son's anxiety and after several bullying incidents, my son's 'fight or flight' reaction changed from 'flight' (e.g. hiding in the car park or climbing the fence) to 'fight' (mainly swearing) and lost trust in teachers and therapists leading to exclusion from classes.⁶¹⁷

Impacts of suspension and expulsion

Parents and students described the impacts of suspension and expulsion, including implications for future life chances:

My son has been expelled twice from schools. After that, I spent 16 weeks at home with him every day trying to get him into another school – any other school. It took 177 phone calls to get him into a special school, on limited hours. They started with one hour a day and we had to drive him up and back every day. The cost? It cost me a fantastic project, it cost me my career, it just about cost me my job ...⁶¹⁸

My son has Asperger's and was severely disadvantaged during secondary school, with many suspensions through things he had no control over. We were told that the school staff were educated in Asperger's students needs – but you have to wonder. Their education certainly did not transfer to practical application. My son did not complete his secondary school education, which now extremely disadvantages him. Had all things been equal he would have been at university now.⁶¹⁹

While it is generally accepted that school suspensions can have serious negative effects on the student, in particular the increased risk of their disengagement from school, research by the Centre for Adolescent Health at the University of Melbourne suggests that school suspension may also increase the likelihood of antisocial and violent behaviours over time.⁶²⁰ If, as this research found, suspension may actually exacerbate challenging behaviour, then it calls into question the use of suspension as a means of responding to behaviours that manifest as part of a student's disability, both on the grounds of anti-discrimination principles and on the grounds of efficacy.

Opportunities for improvement

In this research, there was consensus that behavioural issues are a common reason for suspension, expulsion or other exceptions to full-time attendance at school.

Experience has shown, and departmental policy confirms that positive behaviour support is the best way to manage what can be very challenging issues.

Much has been done in this area, but our research suggests that some educators still struggle to look beyond the behaviour to the student's disability, and to maximise prevention strategies through greater use of positive behaviour support.

Policy guidance is in place to encourage the use of behaviour support plans to deal with these issues but it appears this guidance is inconsistently applied. This means that while the majority of students with disabilities do not face suspension, some students are being suspended over and over again, and in some cases expelled.

613 Some educators also mentioned this. Conversely, some educator survey respondents described bullying by the student with disability as a reason for suspension.

614 Student, government mainstream school. Student survey participant.

615 Student, government mainstream school. Student survey participant.

616 Parent of student attending a government mainstream school. Parent survey participant.

617 Parent of student attending an Independent school. Parent survey participant.

618 Parent survey participant.

619 See e.g. Case study 18.

620 Sheryl Hemphill and John Hargreaves, 'The Impact of school suspensions: A student wellbeing issue' (2009) 56 *ACHPER Healthy Lifestyles Journal* (3/4) 2009 5, 5.

Previous research by the Commission found a link between reduced attendance, suspension and expulsion, and the relinquishment of children into state care. We also found that there was inconsistency between how schools and services provided by the Department of Human Services support families where behavioural issues associated with disability were present.⁶²¹ Improving consistency on approaches to positive behaviour supports would help to ease pressures on schools and families who are grappling with the complexity of such behaviours.

The Commission was disappointed to find that there is currently no robust data available on how many students in Victoria are on reduced (part-time) attendance patterns and how many of these students have disabilities.⁶²² Suspension and expulsion data is not published either.

Without this information, it is impossible to understand how large the problem is, where it is happening, and if students with disabilities are over-represented among children not attending school full-time.

A simple solution would be for the DEECD and counterparts in the Catholic system to collect, analyse and publish this data. This would help establish where effort should be focused and build confidence in the transparency of school systems.

Given the importance of school attendance for successful learning outcomes, if a reduced attendance arrangement is agreed with the parent and meets the narrow range of exceptions allowed under *Student Engagement Policy Guidelines*, then this should be recorded on the student's individual learning plan. The ILP should also include a return to school plan. These ILPs should be submitted to the regional disability coordinator so that they can monitor trends in part-time attendance and offer appropriate support.

Recommendations

17. Education authorities collect and annually publish aggregate data on the number of suspensions and expulsions of students with disabilities from schools.

18. All Victorian schools report on the number of suspensions and expulsions of students with disability as part of their cyclical review to maintain registration as a school.
19. Noting that some Victorian schools already have a 'no suspension or expulsion of students with disability' policy, that this approach be examined by relevant education authorities with a view to mandating this in all schools.
20. Noting the findings of the *Report of the Review of Disability Standards for Education 2005*, and the Victorian Auditor-General's audit of programs for students with special learning needs, that any reduced attendance arrangements for a student with disability be consistent with Victorian laws, be time limited; accompanied by a return to school plan and:
 - a. approved by the student support group;
 - b. recorded in the student's individual learning plan;
 - c. in government schools, that this individual learning plan be submitted to the regional disability coordinator so they may monitor the student's return to school.
21. Government schools submit data to the Student Wellbeing Division, Department of Education and Early Childhood Development on the number, type, frequency, length and reason for reduced attendance patterns of students with disabilities as part of the mid-year school census and that this information be published in aggregate form in the department's annual report. In the first instance, this could relate to students eligible for Program for Students with Disabilities funding, and thereafter all students with disabilities.
22. The Department of Education and Early Childhood Development and the Department of Human Services develop a protocol for sharing information regarding students with disabilities on reduced attendance arrangements, and those excluded or frequently suspended from school. This should be developed in consultation with the Privacy Commissioner and the Child Safety Commissioner.
23. The Department of Human Services and the Department of Education and Early Childhood Development work together to improve consistency in behaviour supports for students with disabilities.

⁶²¹ Victorian Equal Opportunity and Human Rights Commission, *Desperate measures: The relinquishment of children with disability into state care in Victoria* (2012) 32, 36.

⁶²² Data on dual enrolments is available. Dual enrolment is lawful under the *Education and Training Reform Act 2006* (Vic) and so is not considered by the Commission to equate to reduced or part-time attendance.

Chapter 10: Use of restraint and seclusion

Main findings

- There is no legal requirement for a teacher or school in Victoria to report the use of restraint or seclusion of a student. This means that there is no data on how frequently these practices occur in schools, why they are used or their impacts.
- There is no independent oversight or monitoring of the use of seclusion and restraint in Victorian schools. This contrasts with disability services where such instances must be reported to the Office of the Senior Practitioner, Department of Human Services. The Commission is concerned that, although adults with disabilities subject to restrictive interventions have the benefit of reporting and independent monitoring, children with disabilities in school do not have the same protection.
- As part of our research, 34 parents reported the use of restraint on their child at school and 128 parents reported that their child had been placed in 'special rooms'. Because there is no official data, it is not possible to test these claims.
- 514 educators reported having used restraint. Over half said they were inadequately trained to deal with this situation.
- A number of circumstances describing the use of restraint and seclusion described to the Commission by parents and educators would constitute a breach of human rights.

Definitions

A restrictive intervention is any intervention used to restrict the rights or freedom of movement of a person with disability.⁶²³ It can include various forms of restraint or seclusion.

Seclusion is the sole confinement of a person with disability in a room or place where the doors and windows cannot be opened by the person from the inside; or where the doors and windows are locked from the outside.⁶²⁴ Seclusion 'includes situations in which people believe they cannot or should not leave an area without permission'.⁶²⁵

There are various forms of restraint, including:

- physical restraint – the use, for the primary purpose of the behavioural control of a person with a disability, of physical force to prevent, restrict or subdue movement of that person's body or part of their body, and which is not physical assistance or physical guidance.⁶²⁶
- mechanical restraint – the use of devices, such as harnesses or straps, to restrict or subdue a person's movement for the primary purpose of behavioural control. It does not include use of devices for therapeutic purposes or to enable the safe transportation of a person with disability.
- chemical restraint – where a drug is used to control or subdue a person with disability, for the primary purpose of behavioural control. It does not include the use of a drug prescribed by a registered medical practitioner for the treatment, or to enable the treatment, of a mental or physical illness.⁶²⁷
- psychosocial restraint – the use of social or material sanctions, or verbal threat of those sanctions, to attempt to moderate a person's behaviour. It can include techniques such as being directed to stay in an unlocked room, corner of an area, or in a specific space until requested to leave. Also known as 'exclusionary time-out', it can include being directed to remain in a particular physical position until told to discontinue.⁶²⁸
- consequence-driven strategies – such as withdrawing activities and or items until the person 'behaves correctly'.
- environmental restraints – including lack of free access to all parts of the person's environment.⁶²⁹

623 State of Victoria, Office of the Senior Practitioner, *Physical Restraint Direction Paper* (2011). 4. The Commission notes that this legislation does not apply to Victorian schools; however, the definitions contained in the Act as consistent with international guidance.

624 This definition is based on that contained in the *Disability Act 2006* (Vic).

625 Australian Psychological Society, *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector* (2011) 11.

626 Office of the Senior Practitioner, above n 623, 2. See also Ibid 11.

627 These definitions are based on those contained in the *Disability Act 2006* (Vic). Physical restraint is not defined in the Disability Act, it is defined by a direction of the Senior Practitioner under section 150(2)(e) of the Act. See also Australian Psychological Society, *above n 624*, 11.

628 State of Victoria, Office of the Senior Practitioner, *Practice Guide – other restrictive interventions : locked doors, cupboards, other restrictions to liberty and practical ideas to move away from these practices* (2010) 3.

629 Section 150 of the *Disability Act 2006* refers to 'other restrictive interventions'. These can include psychosocial restraint, environmental restraints and consequence driven strategies. Ibid 3.

Experiences of parents and students

Prior to commencing this research, the Commission received anecdotal reports of restrictive interventions in schools, including use of restraint and seclusion as a behaviour modification tool.⁶³⁰ The Principals' Association of Specialist Schools had also published a position paper on positive behaviour management indicating that restraint was in use in Victorian schools, and that locked time-out rooms were also in operation.⁶³¹

Similarly, Worksafe has published a *Guide to challenging behaviour risk prevention in specialist schools* which refers to restraint and seclusion – suggesting that these restrictive practices are operation in some Victorian schools. These issues were also raised in the review of the *Disability Standards for Education 2005*, where it was submitted that 'teachers are not well equipped to deal with the challenges associated with students who have complex needs...this is increasingly leading to the use of restrictive practices such as the unplanned use of medications, physical, mechanical and special restraints'.⁶³²

In an effort to learn more about how and why restrictive interventions might be used in school settings, we included questions on the use of restraint specifically and behaviour management generally in our survey of parents and educators.

The Commission acknowledges that the stories collected through the survey, 'have a say' days and case studies are from the perspective of one person only. Where allegations of the inappropriate use of restraint or seclusion are made, these cannot be substantiated or contested. This section of the report should be read with this in mind.

It is also important to note that a significant proportion of parents (one-third of survey respondents) reported the effective use of positive behaviour supports at school. In particular, the use of positive reinforcement, calming techniques, clear communication and, most importantly, an understanding of what can drive and trigger behaviours in students with disabilities were identified as working well in the schools where these approaches are used.

630 There have also been media reports of alleged use of seclusion. See e.g. Andrea Hamblin, 'Special school probed', *Geelong Advertiser* (Geelong), 12 September 2011 1.

631 Principals' Association of Specialist Schools, *PASS Position Paper on Positive Management Strategies* (2011) 3.

632 Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 18. See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 27.

Human rights considerations regarding the use of restraint and seclusion

The Charter of Human Rights and Responsibilities

The use of restrictive interventions in government schools engages, and arguably limits, the following human rights under the Charter of *Human Rights and Responsibilities Act 2006* (the Charter).⁶³³ These rights must also be considered when making law and policy about the use of restraint or seclusion in schools.

Equality before the law. Section 8(2) of the Charter provides that every person has the right to enjoy his or her human rights without discrimination.⁶³⁴

Protection from torture and cruel, inhuman or degrading treatment. Section 10(b) of the Charter states that a person must not be treated or punished in a cruel, inhuman or degrading way. International human rights bodies have repeatedly emphasised that corporal punishment and, more generally, physical restraint in a school environment is incompatible with the protection against cruel, inhuman or degrading treatment.⁶³⁵

Freedom of movement can also be engaged by use of restraint or seclusion.⁶³⁶

Protection of families and children. Section 17(2) of the Charter states that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

633 A government school is a public authority and therefore bound by the Charter. However, Independent and Catholic schools are not public authorities. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(1)(c).

634 This is relevant where adults have protection or oversight, and children do not.

635 See e.g. UN Human Rights Committee, General Comment No. 20, para 5. See also: Report of the Committee against Torture, UN GAOR, UN Doc. A/50/44 (1995), para 169 (declaring that the 'continuing application' of corporal punishment 'could constitute in itself a violation of the Convention').

636 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 12.

Right to liberty and security of person. Severe restrictions on movement, such as physical restraint where a person is effectively 'detained', can amount to a deprivation of liberty. Under section 21 of the Charter, a person must not be deprived of his or her liberty, except on grounds, and in accordance with procedures, established by law. This Charter right also includes the right to security. The concept of security refers to people's physical and mental health. Public authorities can have a range of responsibilities to protect people's security. This can arise when they have direct care of the people concerned, and also when they can intervene in treatment by third parties, through appropriate policing, oversight and emergency services.⁶³⁷

Section 38(1) of the Charter states that it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

For example, physically restraining a student, especially in front of his or her peers, may be a degrading experience for the child. In addition, for a child who does not understand why the restraint is being applied, or when it will end, the restraint could arguably constitute cruel treatment.

Similarly, placing a child in seclusion, such as a locked room, will engage rights to protection from cruel or degrading treatment. It also restricts a child's right to freedom of movement and liberty.

It is also arguable that, given physical restraint is associated with high risk of injury and harm, it is not in the best interests of a child to physically restrain him or her.

In certain circumstances, it is lawful for rights protected by the Charter to be limited under law. Section 7(2) of the Charter states that a human right may be limited where it can be 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors ...'⁶³⁸

While the degree of restraint, any immediate danger to the child or others, and the circumstances in which students are restrained must be taken into account in determining whether this action is a reasonable limitation on the right to be free from degrading treatment,⁶³⁹ the significant impact that restraint has on children, particularly children with a disability, must also be taken into account.

Use of restrictive practices may amount to discrimination

Although Catholic and Independent schools are not bound by the Charter, all Victorian schools are bound by the *Equal Opportunity Act 2010* and the *Disability Discrimination Act 1992*.

Arguably, the use of restraint and seclusion may amount to indirect discrimination where the school requires such practices in order for the student with disability to receive education services. In this case, the use of restraint or seclusion could be an unreasonable requirement or condition that disadvantages them because of their disability.⁶⁴⁰

Whether a requirement or condition is reasonable depends on all the relevant circumstances of the case, including whether the disadvantage is proportionate to the result sought and the availability of an alternative requirement, condition or practice that would achieve the result.⁶⁴¹ In this case, whether there was another way to keep the child and others safe, or an alternative way to improve behaviour using other methods would be factors to consider in determining whether unlawful discrimination has occurred.

It should be noted that under the Equal Opportunity Act, a school may discriminate against a student with a disability if the discrimination is necessary to protect the health or safety of any person.⁶⁴² This exception might arise in a situation where a student with a disability is isolated because of dangerous behaviour linked to the student's disability; however, if the restraint or seclusion is not related to the immediate protection of another person, for example where it is used for general behavioural control or punishment, this exception would not apply.

637 This means that a lack of government oversight can operate to limit this right.

638 These factors include the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relationship between the limitation and its purpose; and any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

639 Applying the reasonable limitations test in section 7(2) of the Charter.

640 *Equal Opportunity Act 2010* (Vic) s 9 (1).

641 *Equal Opportunity Act 2010* (Vic) s 9 (3).

642 *Equal Opportunity Act 2010* s 86(1)(b).

International obligations

International human rights protected by treaties under which Australia has obligations, that relate to use of restraint and seclusion of children include the:

- *International Covenant on Civil and Political Rights*⁶⁴³
- *International Covenant on Economic, Social and Cultural Rights*⁶⁴⁴
- *Convention on the Rights of Persons with Disabilities*⁶⁴⁵
- *Convention on the Rights of the Child*⁶⁴⁶
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁶⁴⁷

The United Nations Committee on the Rights of the Child has recognised that children, by reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection and that government institutions such as schools have additional responsibilities to protect children.⁶⁴⁸ The Committee has also recognised that children with disabilities are more vulnerable to violence, abuse and neglect in all settings, including schools.

643 *International Covenant on Civil and Political Rights*, opened for signature on 19 December 1966, 999 UNTS 171, arts 7, 9, 10, 12, 24, 26 (entered into force 23 March 1976).

644 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 19 December 1966, 999 UNTS 3, Arts 12, 13 (entered into force 3 January 1976).

645 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, arts 4, 7, 14, 15, 16, 24 (entered into force 3 May 2008).

646 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, arts 3, 12, 19, 25, 37 (entered into force 2 September 1990).

647 Under this Convention state parties are obliged to prevent acts of cruel, inhuman or degrading treatment or punishment; ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are included in the training persons that are involved in the arrest, custody and interrogation, detention or imprisonment of any individual; and implement mechanisms to regularly review this. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 9 UNTS 1465 (entered into force 26 June 1987).

648 UN General Assembly, *Declaration on the Rights of the Child*, Resolution 1386 (XIV), 20 November 1959.

In addition, Australia as a signatory to the Convention on the Rights of the Child must 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation'.⁶⁴⁹

Frequency of physical restraint and seclusion in Victorian schools

Mindful of the human rights implications of the inappropriate use of restrictive interventions, and concerned for the dignity and rights of children with disabilities, the Commission sets out below the experiences of parents and educators in their own words.

Positive behaviour management was the most common behaviour management strategy reported by parents involving their child. Some 283 survey respondents reported this form of intervention and the Commission welcomes this finding.

However, the use of restrictive interventions was also reported by some parents in our survey.

- 128 parents reported that their child's school uses placement in special rooms (other than time-out rooms) as a behaviour management technique.
- 34 parents reported the use of physical restraint on their child as a behaviour management technique at school.

The use of time-out rooms was reported by 216 parents. Some parents were positive about use of these rooms, others were not:

Time out at [child's school] is a positive, self-calming opportunity for the student, in a remotely monitored space. The time-out room is a large space and does not intimidate my child, but offers him a solitary space to calm down.⁶⁵⁰

The use of time out may be a legitimate therapeutic intervention, however, if the person can not leave it, and is alone then it would be defined as seclusion.⁶⁵¹

649 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, art 19 (entered into force 2 September 1990).

650 Parent of student attending government specialist school. Parent survey participant.

651 Key informant interview, Office of the Senior Practitioner, Department of Human Services.

Around 60 per cent of educators surveyed reported that they had physically restrained a student at school during their career.⁶⁵² Comparatively few parents surveyed reported that their child's school uses physical restraint as a behaviour management technique.⁶⁵³ A higher proportion of parents of students in specialist schools reported that their school used physical restraint.⁶⁵⁴

This high rate of reporting by educators may be because many viewed the term 'physical restraint' as including circumstances where they had to quickly grab a child to prevent them from running on a road or into some other situation of potential harm, while parents specifically referred to physical restraint as a form of behaviour modification. However, it may also indicate that they do not necessarily know when, and if, restraint is occurring.

The issue of restraint and seclusion in schools was discussed at nine out of the 15 'have a say' days that the Commission convened. Out of those nine, five were groups of parents (and sometimes students) and four were groups of educators.

All nine groups agreed that restraint occurs in Victorian schools, although some participants stated that restraint is much more of an issue in specialist schools than in mainstream schools. Some parents reported less serious incidents of restraint, while others reported extreme examples.

Reports of restraint and seclusion were also made in submissions from the Disability Discrimination Legal Service and others. Autism Victoria (Amaze) wrote:

Throughout the 2011 year Amaze received innumerable calls from parents regarding what they considered to be unfair treatment of their child by the school when responding to behaviours of concern. These included reports by parents of their children being forced to sit on chairs for hours in the Principal or Deputy Principal's office, use of fenced enclosures as time out, teachers focussing blame unfairly on their child, children being unfairly punished by staff and children being expelled for inappropriate behaviour when the behaviour was created by poor school practices.

652 514 educators. A breakdown on the reason for restraint was not included in the survey however comments in other questions suggest that educators are likely to include instances where a teacher holds a child to prevent the child from running away or otherwise into danger as restraint. However, other practices that would fit within the definition of a restrictive intervention were also reported by educators.

653 Thirty-four parents.

654 Fourteen out of 105 parents.

The overall view of parents and educators who attended the 'have a say' days was that there is insufficient guidance in relation to restraint and how it should be used in schools. Many highlighted the need for more detailed practice protocols and training for educators on the use (and avoidance) of restraint.

The Victorian Auditor-General came to a similar conclusion in his recent report which found that 'audited schools used a variety of practices to restrain and seclude students... but rarely had documented policies for their use'.⁶⁵⁵

Types of restraint reported by parents

Some selected examples of the use of restraint reported by parents are set out below. These cannot be proven or disproven by the Commission as they are the perceptions of parents and have not been subject to independent verification. However, they have been included to provide feedback to educators about what parents believe is occurring in some school settings:

My child has been taped to chairs, roped to get out of trees, has been locked in rooms and out of the classroom, he has been locked in the principal's office for hours even when he was having meetings, he has been held down, he has been grabbed by the back of the neck and pulled to the ground, he has been in holds.⁶⁵⁶

He only has to stand up or call out and up to 10 staff will jump on him and force him to the ground where they will hold him until he stops moving or shouting and then let him go – it can be up to half an hour.⁶⁵⁷

Our son has experienced a variety of behaviour management techniques during his educational program including: rewards with special activities (e.g. time on the computer, walk to the shop, McDonald's), sent home, removed from the school bus, time out in the sensory room, removed from the classroom, missing out on special activities, picking up rubbish, physical restraint (taken to the ground by staff) locked in a classroom, held up by his underwear (several pairs of underwear were torn during this technique) to walk laps of the oval as endorsed by the school's contracted behaviour specialist.⁶⁵⁸

655 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs' above n 73, 27.

656 Parent survey participant.

657 Parent of student attending government specialist school. Parent survey participant.

658 Parent of student attending government specialist school. Parent survey participant.

Our son was going through a very difficult time. His behaviour was very aggressive at times and he was very frustrated. We gave the school permission to use time out to try to address these issues. He was sometimes put in his push chair to be restrained.⁶⁵⁹

... I have been asked for a helmet to be used for behaviour control.⁶⁶⁰

Reports from parents in our survey included:

- a child at a government mainstream school being restrained 'for his own good' when self-harming, despite parents not agreeing with this method⁶⁶¹
- a child who lost the right to use electric wheelchair under a behaviour management points system. He would then have to use the manual wheelchair, which required him to be pushed.⁶⁶²

Another example reported to the Commission involved a student with physical disabilities who had been assessed by the school occupational therapist as able to walk between classes, provided he left class five minutes earlier than other students and had assistance. However, the school placed him in a wheelchair to transport him from one class to the next. This also meant the child was unable to fully participate with the rest of the class, particularly with subjects such as PE. Even when the class was being read to, the child was sometimes placed in a wheelchair. The parent and the student viewed the requirement to sit in a wheelchair as being a restraint, as it was not necessary for the student to be in a wheelchair when he could walk.⁶⁶³

'Have a say' day discussions of restraint

Four out of seven parents participating in one of the regional 'have a say' days reported that restraint had been used against their child.⁶⁶⁴ These parents said that the use of restraint in schools is common. Three parents stated that it is often difficult to get the full story of these incidents because schools may be reluctant to disclose the incidents and the child may not be able to articulate what happened until they are older. One parent was informed of an incident of restraint by another parent.

The types of restraint reported by parents in our 'have a say' days included:

659 Parent of student attending a government mainstream school. Parent survey participant.

660 Parent of student attending a government specialist school. Parent survey participant.

661 Parent survey participant.

662 Parent survey participant.

663 HASD 1.

664 HASD 2.

- four teachers restraining a child after a mirror was smashed⁶⁶⁵
- tying a rope to a child's foot to pull him down from a tree, holding down the child and taping the child to the principal's chair⁶⁶⁶
- grabbing a child to stop him running upstairs, which resulted in the child panicking and knocking over the teacher. The teacher got a clot in her eye and the child was traumatised. The police were called. He could not eat or speak and became withdrawn and was unable to return to the school for a whole term.⁶⁶⁷

One parent noted that teachers are often upset about having to use restraint and do not do so in a punitive manner.⁶⁶⁸ Another parent said they understood why restraint was sometimes necessary:

Some parents take their children to school, 'dump them at the door' and expect the schools to do everything.⁶⁶⁹

Parental permission

While the majority of reports on the use of restraint were negative, a small number made supportive comments. For example, one parent of a child attending a government specialist school commented that restraint was used against their child for his safety and the safety of others. This parent supported such action 'as long as it was needed at the time'.⁶⁷⁰

Educators' descriptions

Some children are tied to chairs so they won't move around the class or walk out when a teacher is busy with another child.⁶⁷¹

Educators were much more likely to describe restraint in terms of protecting the student or others from harm in an emergency. However, a few examples were reported of restraint being used against students with disabilities purely as means of behaviour modification or punishment. Some situations described by educators where it was deemed necessary to restrain a student involved:

665 HASD 2.

666 HASD 2.

667 HASD 2.

668 HASD 6.

669 HASD 6.

670 Parent survey participant.

671 Educator, specialist school. Educator survey participant.

Parents' reports of seclusion

He was locked in rooms the size of a broom closet. Sometimes they would forget and I would arrive to find him still locked in a little room alone. The school would never tell me – I found out from other parents.⁶⁸⁰

Some parents expressed concern regarding the use of special rooms as a behaviour management technique.⁶⁸¹ Examples described by parents are included below. Again, these are the perceptions of parents and have not been subject to independent verification; however, they do provide feedback to educators about what parents believe is occurring in some school settings:

He is placed on a daily basis into a locked cupboard for at least 15 minutes at a time. They justify this but I am sorry, there is no justification. It is wrong, inhuman and abuse. They use this as a way to get rid of a problem rather than deal with the problem and finding a solution to the issues.⁶⁸²

He was isolated from students. In secondary school [he was placed] in a special room, [it] was a disused school room used as junk. It was just he and his aide. This school used a chair with a red square around it. If he misbehaved he was not allowed to go out of the square and was not allowed to have a drink.⁶⁸³

Our child was locked in a pen/yard without protection from the weather or access to food or water for extended periods, up to 5–6 hours a day. He would come home with large bruises, which staff admitted to doing. Fingernails ripped off and covered in blood. We have written proof from teaching staff that they did this over an extended period of time, until we withdrew our child from the school.⁶⁸⁴

- holding down a student's arms and legs to prevent them physically attacking other students in the class or members of teaching staff⁶⁷²
- when a child was damaging furniture or other school property⁶⁷³
- when a teacher was being physically assaulted by a child (multiple teachers identified this as a trigger for physical restraint)⁶⁷⁴
- preventing a child who was having an epileptic seizure from leaving a room⁶⁷⁵
- removing sharp objects, such as pencils and compasses, from students with intellectual disability where these objects were being used as weapons against other students.⁶⁷⁶

An educator responded:

Although I have not had to physically restrain a student myself, I have been in situations where other staff have had to do this. Sometimes a student has become a danger to himself/herself, staff and other students e.g. smashing windows, throwing chairs or tipping over tables. This can happen with younger students as well as older students. Physical restraint has always in my experience, been only when necessary to ensure the safety of others, and only to the degree needed. Students often need time alone to calm down.⁶⁷⁷

Another told the Commission the school has a room that a student is sent to when 'he has a meltdown and starts thrashing'. The door to this room is not locked and teachers are with him. The principal and the student's parents are notified when a student is put in this room.⁶⁷⁸

Some educators identified the critical importance of planning and getting to know the student with disability so that triggers for behaviour can be identified and avoided, and teachers do not need to resort to using restraint. Several teachers cited the option of removing other students from the room as an alternative method to restraining the child.⁶⁷⁹

672 Educator survey participant.

673 Educator survey participant.

674 Educator survey participant.

675 Educator survey participant.

676 'Students with intellectual disabilities try to stab each other with compasses and pencils and teacher usually has to grab their arm or the equipment from their hand.' Educator survey participant.

677 Classroom teacher, government specialist school. Educator survey participant.

678 HASD 8.

679 HASD 5.

680 HASD 2.

681 Parent survey participant.

682 Parent of student attending a government specialist school. Parent survey participant.

683 Parent of student attending Independent specialist school. Parent survey participant.

684 Parent of student now in distance education. Parent survey participant.

One parent told the Commission that their teenage son has autism spectrum disorder and that his teacher stands on his feet to restrain him. This causes his distress to escalate and he is then deemed to be 'violent' and 'threatening' and put in isolation, often being dragged off in front of the other students. The child is now too scared to go to school.⁶⁸⁵

Another parent reported that their son, who has a primary diagnosis of autism spectrum disorder, was sent to a seclusion room for swearing. However, nothing further was done to address his behaviour and he continued to be placed periodically in the room until he left the school. The parent went on to say:

I never found this out until the end of his schooling... I had seen another child shut in the seclusion room for about an hour when I was at the class for my son's birthday. I don't know why the girl was placed in the room. It is never mentioned at parent-teacher meetings as a way they were managing behaviours and I was never informed when my son was sent to the room. It may have been more often. There are no guidelines or regulations in Victoria as to how seclusion rooms may be used, or any safety guidelines. A boy hung himself in a seclusion room in the USA a few years ago: it could happen here.⁶⁸⁶

Further, a parent told us that their child was placed in a room without a roof where they could hear the child banging his head against a wall made of thick concrete.⁶⁸⁷

A small number of parents also commented that isolating their child from others helped to calm them down and was a positive behaviour management technique:

The school has a safe spot for him to withdraw to. I'm happy with their efforts in this area.⁶⁸⁸

My son often yells when he gets excited. [I]f he is being too noisy he is removed from the room and told that when he can use his inside voice he can return to the classroom. This was done in consultation with me the parent and [I] agreed to it.⁶⁸⁹

685 HASD 12.

686 Parent of student who previously attended a government specialist school. Parent survey participant.

687 HASD 12.

688 Parent of student attending a government mainstream school. Parent survey participant.

689 Parent of student attending a government mainstream school. Parent survey participant.

How are allegations of restraint and seclusion managed?

While the overall reporting by parents of incidents of restraint and seclusion was relatively low in terms of numbers, those incidents that were reported were relatively severe. However, some parents expressed the view that their concerns about restraint and violence in schools were not taken seriously:

I believe physical abuse of children at specialist schools is happening too often now and schools and teachers are getting away with it. Even though my son told me exactly what his teacher did to him, the school principal did not take it seriously, she discriminated against him ... Teachers should be more accountable for their actions, they must be monitored more closely by an independent organisation as [the Department of Education and Early Childhood Education (DEECD)] is not doing anything! ... I believe cameras should be mandatory in all classrooms at the specialist schools as these children have no voice and a camera cannot lie.⁶⁹⁰

What is the point – try proving in courts that it was unnecessary restraining. The school will back the carer; I will be challenged on details. It will be a case of 'she said, he said'.⁶⁹¹

Training of educators

Range of training provided

As part of the Commission's survey, educators identified the following general categories of training in relation to behavioural management generally, and physical restraint specifically:

- one-off training session with teachers from specialist schools on 'what to do when restraint was required' and how to utilise safe spaces and time-out rooms
- one-off address given by a union official
- occupational violence training (multiple respondents indicated this was common)

690 Parent of student attending a government specialist school. Parent survey participant. See also case study 29 where the parent reported their child being held down and hit resulting in severe bruising, anxiety and self-harming behaviours. The parent withdrew the child from the specialist school after the internal school investigation found the claim to be unsubstantiated. See also case study 33.

691 Parent of student attending a Catholic school. Parent survey participant.

- school-wide training in safe restraint techniques, where training opportunities are offered on a biannual basis and provided by external service providers with speciality training
- training programs run by DEECD, including 'safe restraining training'
- training on minimally invasive restraints through in-school professional development
- the Management of Violence and Aggression International Training (MOVAIT) course
- the Calmer Classrooms Professional Development training program (multiple respondents reported being provided with this training)
- the Professional Adult Response Training (PART) and positive behaviour support training programs (several respondents reported being provided with this training)
- annual programs by Team Teach Australia
- an annual training program from James Sumerac on low-resistant restraints and protective actions to use when moving students displaying harmful behaviours (reported by three respondents)
- occupational health and safety manual handling training, as well as physiotherapists at the school providing training sessions on safe lifting techniques
- Physical Response Program training
- tertiary study programs
- managing challenging behaviour training.

Educators also reported receiving on-the-job training by principals and other senior teachers. Some reported the establishment of protocols regarding 'escorting, reporting of incidents, lock down procedures and manual handling of students' distributed throughout the school, while others described whole-of-school behavioural management plans.

Several survey respondents reported taking part in a martial arts therapy program, which introduced various types of self-protection and 'methods of restraining students without injuring them', as well as non-physical behavioural correction techniques.⁶⁹²

Teachers who reported using physical restraint were also asked if they felt they were given adequate training to manage the situation. Just over half reported that they did not.⁶⁹³

Three in four educators at specialist schools had physically restrained a student. Of these, one-third felt they did not have adequate training to manage the situation.⁶⁹⁴

Understanding the limits of restraint

A majority of educators who had received some training in restraint and seclusion reported that they had been directed not to physically restrain students unless it was 'absolutely necessary to do so'.

Many respondents also reported that they were aware that student safety was the most important consideration when restraining or moving children with a disability.

This is broadly consistent with DEECD policy. However, the policy is very specific in that physical restraint can only be used when all of the following conditions are met:

- the situation is an emergency and the danger of harm to the student and/or others is imminent
- the restraint is used to prevent the student from inflicting harm on him/herself and/or others
- there is no reasonable alternative that can be taken to avoid the danger.⁶⁹⁵

Several teachers reported the difficulties involved in balancing the dignity and safety of a student who may need to be restrained with the need to ensure the safety of other children and the teacher:

There has only been one incident and this was a new Year 7 who had only been in the school for a few weeks. We had lots of information about his behavioural issues but had never been made aware that his outbursts were so extreme and violent and that he had been regularly restrained throughout primary school. I was completely unaware of the legality of restraining him or of any strategies or techniques to manage such an outburst and [I] had to go completely on instinct.⁶⁹⁶

694 Seventy-seven per cent of educators at specialist schools (154 out of 200) reported they had physically restrained a student with a disability. Sixty-six per cent felt they had adequate training, but 34 per cent did not.

695 State of Victoria, Department of Education and Early Childhood Development, School policy and advisory guide: safety response- restraint <<http://www.education.vic.gov.au/management/governance/spag/governance/safetyresponse/studentrestraint.htm>> at 26 June 2012.

696 Principal, government mainstream school. Educator survey participant.

692 Educator survey participant.

693 55.6 per cent (224 teachers) said no.

One teacher from a state specialist school commented that, at their school, only selected staff are permitted to restrain students and they are provided with comprehensive training in order to do so.⁶⁹⁷

While most comments about the adequacy of training related to in-school professional development, two teachers reported that strategies around physical restraint, seclusion and behavioural management techniques were not adequately covered in teacher training at university.⁶⁹⁸

Challenges in the classroom

Several teachers noted that teaching students with disabilities requires specialised skills and training and that each child has different needs and triggers for behaviour. This can make training requirements very complex and often situation-specific.

Many teachers reported that funding for training was inadequate and that while schools might want to provide further training for staff, they could not afford external specialised training.⁶⁹⁹

A number of respondents noted that time and teaching resources are often limited in government schools and that this has a direct impact on the availability and quality of teacher training, as well as on the facilities and teaching resources for students with disabilities in general. They told us that it was very difficult to balance the needs of students with disabilities, particularly where there is more than one child per class, with the needs of other children, and that this affects the type of interaction that teachers have with these students:

I have three autistic students in my class, one of them is not funded. He is quite violent and lashes out at other students and needs one-on-one assistance to start and complete tasks. This just can't be done in a grade of 24 [students].⁷⁰⁰

I don't think [DEECD] provides enough support for physically abusive students – some classes have several students who throw furniture/harm others: they obviously need smaller groups and more intensive support.⁷⁰¹

One teacher reported that inappropriate management of student behaviour can lead to an increase of challenging behaviours in the classroom and that this in turn contributed to a need to restrain children:

Some teachers appear to increase aggressive behaviour in their students. These teachers shout at students and use aggressive body language when responding to difficult behaviours. They sometimes confiscate security objects, with a result of increased cycles of anxiety resulting in increased aggressive, self-injurious or other unwanted behaviour or sometimes school refusal.⁷⁰²

Ad hoc training

Survey responses indicated that regular, formal and specific training on restraint and seclusion is not the norm. Rather, a majority of respondents reported ad hoc training that varied from institution to institution. For example, a teacher might receive formal training in restraint and safe behavioural management at one mainstream school but receive no equivalent training at their next school:

As the AP [assistant principal] I'm in charge of discipline. I need to act quickly and in doing so, I don't have time to remember some of the issues affecting my students. An autistic child won't react to my instructions ... he kept running away from me and I did the chasing when I was not supposed to do it ... Chasing him encouraged the child to run faster in this case.⁷⁰³

Immediacy of incidents

Another issue identified was the immediate nature of incidents where a teacher felt that physical restraint was necessary. In many examples given, the situation arose very quickly and an immediate response was required. Teachers reported that they felt that they did not have the planning and emergency response training to properly respond to the incident and so relied on 'common sense' or instinct to manage the situation.

697 Educator survey participant.

698 Educator survey participant.

699 Educator survey participant.

700 Classroom teacher, government mainstream school.
Educator survey participant.

701 Classroom teacher, government specialist school.
Educator survey participant.

702 Classroom teacher, government specialist school.
Educator survey participant.

703 Assistant principal, government mainstream school.
Educator survey participant.

At least four teachers reported that incidents where restraint was used are unusual and that, as a result, training is provided on a reactive basis (e.g. after an incident has already occurred) or on a sporadic basis (one respondent reported one training session in 10 years).⁷⁰⁴

The training is so brief and infrequent that it is difficult to remember. We are trained in administering EpiPens every six months; it is a shame that handling students in physically threatening situations isn't as thorough.⁷⁰⁵

Training and support following an incident

Several respondents reported that training and professional development was offered after an incident had occurred. However, this did not occur regularly enough to enable staff to put in place behavioural management plans to decrease the likelihood of restraint incidents occurring.⁷⁰⁶

The majority of educators reported that their colleagues were supportive of them when an incident did occur, although a large number of respondents reported that senior teachers and principals did not take effective measures to prevent future incidents occurring after a restraint incident:

We have been directed not to restrain any student, but have been given no appropriate or practical instructions on what to do, if, for example, a student is attacking a staff member or student or running away or dropping to the ground and refusing to move or smashing furniture, etc.⁷⁰⁷

One teacher said that when a student becomes violent, someone from DEECD will come to talk to the school. However, it was felt that there could be stronger leadership in this area so that teachers are clear as to what they can and cannot do.⁷⁰⁸

704 Educator survey participant.

705 EpiPen® is an emergency device that can inject adrenaline. It is used to treat severe allergic reactions (anaphylaxis). Classroom teacher, government mainstream school. Educator survey participant.

706 Educator survey participant.

707 Classroom teacher, government mainstream school. Educator survey participant.

708 HASD 8.

Current regulation of restrictive practices in Victorian schools

Policy and guidance for schools

DEECD publishes a *Restraint of Student Policy* on its website.⁷⁰⁹ The Catholic Education Office does not have a specific policy on restrictive practices but looks to the DEECD policy.⁷¹⁰ Independent Schools Victoria cannot develop binding policy on schools. However, it does not currently have published materials on restrictive interventions for its members.

The purpose of the DEECD policy is to 'ensure schools are informed about the department's policy about restraint including that restraint is only used when certain conditions are met and that appropriate standards and procedures are followed'.⁷¹¹

The policy quotes the *Education and Training Reform Regulations 2007*, which state that '[a] member of staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student, or any other person'.⁷¹² The terms 'reasonable action' and 'dangerous behaviour' are not explicitly defined in the regulations.⁷¹³

709 Department of Education and Early Childhood Development, 'School policy and advisory guide: safety response- restraint', above n 695. Since this research commenced the policy was reviewed, and guidance that is more comprehensive developed.

710 Key informant interview, Catholic Education Office Melbourne.

711 Department of Education and Early Childhood Development, 'School policy and advisory guide: safety response- restraint', above n 695.

712 *Education and Training Reform Regulations 2007* (Vic) reg 15. The regulations also prohibit corporal punishment in government and non government schools. This includes any deliberate action taken with the intention of causing physical pain or discomfort. *Education and Training Reform Regulations 2007* (Vic) reg 14.

713 Or in the authorising enactment: the *Education and Training Reform Act 2006* (Vic). Further, the Explanatory Memorandum to the Act does not discuss physical, chemical or mechanical restraint or seclusion as means of 'reasonable action taken to restrain a student', nor is the issue of restraint discussed during the parliamentary debates for the Act.

The *Restraint of Student Policy* refers to physical restraint only.⁷¹⁴ It does not include mechanical or other forms of restraint, or those of seclusion, because these practices are not endorsed by DEECD.⁷¹⁵

The policy sets out when physical restraint may and may not be used. In particular, it states that restraint must not be used to intentionally provoke or punish a student or to cause harm or injury to the student. It also states that restraint should not be used to maintain good order or respond to a class/school disruption or to respond to a student's refusal to comply, verbal threats from a student, a student leaving the classroom or school without permission or property destruction caused by the student.

Schools should only use restraint in the circumstances set out in the Guidelines and must comply with these guidelines. The policy states 'Only staff trained in using restraint should use restraint on a student'.⁷¹⁶ It also sets out the conditions that must be met before restraint can be used. The policy then steps through the process to be followed, including communicating with student throughout the incident and reporting mechanisms following an incident.

OHS approaches to managing challenging behaviour

WorkSafe Victoria has published a guide to assist specialist schools to understand their duties under OHS legislation.⁷¹⁷ The Australian Education Union has summarised this guide in a checklist, which it describes as useful for all schools.⁷¹⁸

714 The policy defines physical restraint as 'the use of physical force to prevent, restrict or subdue movement of a person's body or part of their body for the primary purpose of 'behavioural control'.

715 'Seclusion is not defined in current policy- and not a practice endorsed by the Department if by the use of the word it is intended to cover practices where this student cannot leave the space, there is a closed door that stops egress...Some schools may have cooling off areas or quiet areas. We would be clear that it should not be somewhere with lack of egress for student, no locked doors; needs to be warm, comfortable, age appropriate, with appropriate supervision'. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

716 Department of Education and Early Childhood Development, 'School policy and advisory guide: safety response- restraint', above n 695.

717 Victorian Workcover Authority, *Guide to challenging behaviour risk prevention in specialist schools* (2008) <www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Forms+and+Publications/> at 9 August 2012.

718 Australian Education Union, *Challenging behaviour checklist*, <http://www.aeuvic.asn.au/challenging_behaviour.pdf> at 9 August 2012.

The WorkSafe guide defines challenging behaviour as any behaviour that:

- is a barrier to participation at school
- undermines a person's rights, dignity, quality of life and health
- poses a risk to health and safety of students, staff and visitors.⁷¹⁹

The guide gives examples of challenging behaviour including violence and aggression, unconscious movement or the need for assistance with movement.⁷²⁰ The guide also defines manual handling as 'using your body to handle, support or restrain objects (or) people'. It gives examples including moving equipment, toileting students, pushing wheelchairs and restraining students.⁷²¹

The guide provides advice to schools on identifying hazards, making risk assessments and controlling risks related to challenging behaviour. This should be based on consultation with health and safety representatives, staff and stakeholders, such as parents.⁷²² The guide advises schools on developing incident management procedures and systems, and on checking that risk prevention measures are working.

The guide refers to behaviour management plans for individual students as a tool for identifying and responding to risks associated with challenging behaviour.⁷²³ According to the guide, an effective behaviour management plan would identify appropriate and inappropriate responses to behaviour, names of staff that can use restraint or seclusion, and procedures for monitoring restraint and seclusion.⁷²⁴ The school should also consider and reduce risks in the physical environment and develop strategies and procedures for assessment, handover, incident recording, evaluation of the behaviour management plans and policies for aggressive or abusive behaviour (such as behavioural contracts).⁷²⁵ The school should consider staffing issues and train staff to handle challenging behaviour as safely as possible.⁷²⁶

719 The guide does not make clear whether all three factors must be met before behaviour is considered 'challenging'.

720 Victorian Workcover Authority, above n 717, 1.

721 Ibid 2.

722 Ibid, 3.

723 Ibid 7.

724 Ibid 8.

725 Ibid 10,13.

726 Ibid 14-15.

The guide makes clear that it is important that schools review their procedures to make sure that they are working. This review could result in changing the workplace environment or procedures, or identifying training requirements.⁷²⁷

The Commission is concerned that the WorkSafe guide conceptualises students with disability as a risk or hazard. It does not talk about the risks to the student if restraint or seclusion is used.

Further, we are concerned that the guide includes requests for disability supports, such as assistance with toileting, or assistance with movement as ‘challenging behaviour’ and thus a risk or hazard to be managed.

The guide also refers to ‘student initiated challenging behaviour’. This terminology fails to consider that such behaviours may arise as a means for a child to communicate distress, frustration or occur in the absence of positive behaviour interventions to assist them to replace the behaviour with a better alternative.

Further, the guide specifically refers to the use of seclusion in schools, although this is prohibited under Departmental policy and offends human rights protected by the Charter and international laws. We are concerned that because Worksafe issues this guidance, school staff may consider that this condones the use of restraint or seclusion as a legitimate means of behaviour management rather than adopting a positive behaviour approach.

It also suggests that specified staff who are authorised to use restraint and seclusion be named in the risk management plan – this risks school staff thinking that such restrictive practices can be authorised under occupational health and safety law without proper consideration of their obligations under the Charter.

Opportunities for improvement

Seclusion and restraint are high-risk, violent interventions whose impact extends beyond the immediate task of attempting to manage a volatile situation.⁷²⁸

New initiatives in training and support

In June 2011, the Principals’ Association of Specialist Schools (PASS) published a position paper on Positive Management Strategies. That paper stressed that specialist schools currently adopt comprehensive management strategies, with many being modelled on positive behaviour strategies.⁷²⁹

In its position paper, PASS noted:

Although there are comprehensive behaviour management plans for most of these students, and training in Aggression Management for staff in many of the schools, situations can arise when it is deemed that a student needs to be withdrawn or restrained to minimise the chances of harm to themselves or to others. It must be emphasised that staff in Victoria’s specialist schools do not use restraint as a punishment or threat, but rather as one of a range of behaviour management techniques, in these cases to protect the safety of all parties involved.⁷³⁰

728 Janice LeBel and Robert Goldstein, ‘The economic cost of using restraint and the value added by restraint reduction or elimination’, (2005) 56 (9) *Psychiatric Services* 1109–1114, 1109.

729 ‘This approach involves a school-wide system with three levels of intervention. Primary prevention strategies focus on interventions used on a school-wide basis for all students. Secondary prevention strategies involve students who do not respond to primary prevention strategies and are at risk of academic failure or behaviour problems but are not in need of individual support. Tertiary strategies are for students who display persistent patterns of disciplinary problems and employ intensive or individualised interventions which are the most comprehensive and complex.’ Principals’ Association of Specialist Schools, above n 631, 2.

730 Ibid.

727 Ibid 18.

PASS also recommended, among other things, that DEECD clarify more explicitly policies and procedures on the restraint of students and the use of time out due to concerns that locking the door on a time-out room might contravene the provision of the Charter.⁷³¹ The recent changes to the DEECD guidelines discussed above go some way towards meeting that recommendation.

In addition, PASS recommended that DEECD provide funding for school staff to undertake appropriate training in working with students with very challenging behaviour.

This recommendation has now been taken up by DEECD under the *More Support for Students with Disabilities* initiative. Over the next two years, a partnership project between DEECD and PASS will develop three professional development modes for specialist school teachers and principals around positive behaviour management, including face-to-face training, an e-learning tool and school-based resources. A reference group that includes representatives from DEECD, the Office of the Senior Practitioner, academics and other key stakeholders oversees this project.⁷³²

The Commission welcomes this investment in professional development and, in particular, the active involvement of the Department of Human Services' Senior Practitioner in its development and execution, noting 'the variable approaches being taken currently, indicate the significant positive impact of a collaboratively developed statewide approach'.⁷³³

While this project is currently in its development phase, the Commission notes that evidence suggests that when people are trained in restraint they will generally use that approach, while those trained in positive behaviour techniques will use that approach as the basis of their interactions.⁷³⁴

It is therefore very important that the primary focus for training and professional development is building capacity in implementing positive behaviour management. The DEECD has advised the Commission notes that the PASS project 'takes an ecological approach, looking at the environment, planning, understanding why these situations occur, positive behaviour. Then at the end would have an add on to the course on self-protection and protection of others'.⁷³⁵

We also note that the PASS and DEECD partnership is limited to specialist schools. Our research suggests that while the use of restraint and seclusion is more common in specialist settings, it may still occur in mainstream schools.⁷³⁶

Workforce development needs to be focused on positive behaviour interventions

Information provided by the Office of the Senior Practitioner shows that, as training on positive behaviour has been rolled out across the disability services workforce, the use of restraint has declined.⁷³⁷ This is good news for students, for schools and the state budget as restraint is quite costly in terms of lost worker time, occupational health issues and staff turnover.⁷³⁸

Disability service providers commonly need training about why people with disabilities display particular types of behaviour. Educators are no different; understanding the function of the behaviour the student is displaying is central to developing behaviour plans that will work in practice and to minimising the use of restrictive practices.

731 Ibid 3–4.

732 Key informant interview, Student Wellbeing Division, DEECD.

733 Victoria and Commonwealth, above n 23, 6.

734 Key informant interview, Office of the Senior Practitioner, Department of Human Services, Key informant interview, Catholic Education Office Melbourne.

735 'Restraint is not a behaviour management practice and so training is not about behaviour management when it deals with restraint. It is about protective behaviours to avoid harm to self or others'. Key informant interview, Student Wellbeing Division, DEECD.

736 The Commission was advised that 'The current focus on specialist schools could expand to mainstream schools'. Key informant interview, Student Wellbeing Division, DEECD.

737 Key informant interview, Office of the Senior Practitioner, Department of Human Services.

738 This is confirmed by international evidence, including a US study that reported that the implementation of a restraint reduction initiative was associated with 'a reduction in the use of restraint, staff time devoted to restraint, and staff-related costs. This shift appears to have contributed to better outcomes for adolescents, fewer injuries to adolescents and staff, and lower staff turnover. The initiative may have enhanced adolescent treatment and work conditions for staff'. Janice LeBel and Robert Goldstein, above n 728, 1114.

In addition, the use of positive behaviour will benefit students in mainstream settings. For this reason, we would encourage the further development of learning and development on these issues at a whole-of-school level across the system. Some work is already in place through initiatives such as School-wide Positive Behaviour Support; however, the Commission understands that this has not been rolled out in every school.⁷³⁹

A more comprehensive and rights-based policy

The Commission welcomes the recent improvements in DEECD's *Restraint of Student Policy*. However, it still has some shortcomings. For example, the policy does not cover the full range of restrictive practices that may occur in schools.

According to parent reports in the Commission's study, restraint and seclusion are currently used in some Victorian schools. If that is the case, educators require clear guidance from DEECD as to the limitations of their use. Ensuring the policy comprehensively covers all forms of restrictive intervention is an important step in this process.

Likewise, there is no reason why Catholic Education Offices could not issue a similar policy or Independent Schools Victoria make an equivalent statement of principle.

The DEECD policy does not include information about the harmful effects of restrictive practices on students with disabilities. This is important context for educators to understand. Materials developed by the Office of the Senior Practitioner for disability service organisations could be readily adapted for this purpose. The existing policy also does not explicitly refer to educator's legal obligations under the Equal Opportunity Act or the Charter, or at federal law, nor does it clearly state that educators place the school and themselves at potential risk of legal action for the unlawful use of restraint.

Zero tolerance of seclusion

The *Effective Schools are Engaging Schools: Student Engagement Policy Guidelines* state that:

Actions and consequences should have an educational role and aim to foster positive relationships and retain the dignity of the student. Actions and consequences that isolate a student from learning should be avoided where possible.⁷⁴⁰

This is somewhat opaque guidance. On the face of it, the Commission cannot see any circumstances where seclusion is a reasonable action in a school environment or where a child's dignity can be retained in such circumstances.

Although the *Restraint of Student Policy* is silent on seclusion, DEECD has informed the Commission that use of seclusion is a clear breach of policy.⁷⁴¹

As such, the policy should unequivocally state that seclusion is not to be used in any circumstances, and this message should be clearly communicated to staff in all schools.

Making sure parents are informed

Participants in the Commission's research made a number of suggestions for improvements in this area, including providing specific information for parents and schools in community languages.⁷⁴²

The *Restraint of Student Policy* states that the staff member(s) involved in the restraint must immediately notify the principal of the incident. The requirement to report the incident to the student's parent(s) is more equivocal, stating that a staff member 'should contact the student's parents and provide them with details of the incident as soon as possible'.⁷⁴³ This means that parents might not be informed of an incident and unless the child tells them, which also may not occur if the child is non-verbal, very young or frightened of repercussions.

739 'The purpose of Schoolwide Positive Behaviour Support program (SWPBS) is to establish a school climate in which appropriate behaviour is the norm for all students. SWPBS is an evidence-based approach which promotes proactive and explicit teaching of behavioural expectations and rewarding students for following them rather than waiting for misbehaviour or unacceptable behaviour to occur before responding. It provides schools with a school improvement framework which focuses on data and enquiry to drive continuous improvement in the school's behaviour management processes and policies. SW-PBS is currently being implemented in some schools in Victoria, Queensland, New South Wales and Tasmania.' <<http://www.education.vic.gov.au/healthwellbeing/respectfulsafe/strategies.htm>> at 26 July 2012.

740 Department of Education and Early Childhood Development, 'Student engagement policy guidelines', above n 434.

741 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

742 See e.g. CALD critical friends group.

743 Department of Education and Early Childhood Development, 'School policy and advisory guide: safety response- restraint', above n 695.

The Commission understands that policy is now being amended to avoid any perception that 'should' indicates a lower expectation that parents will be informed. The Commission welcomes this clarification of policy.⁷⁴⁴

Comprehensive monitoring and reporting on the use of restrictive intervention is required

The *Restraint of Student Policy* states that the restraint 'may need' to be reported as an incident to DEECD Security Services Unit (previously known as the Emergency Management Unit).⁷⁴⁵

It is also not clear if these incidents are audited by that unit or if data on incidents is collected and passed on to regional directors, who would have a strong interest in knowing if any issues of this kind were occurring in schools.

By treating restraint as a critical incident, DEECD should now, for the first time, have reliable, statewide data on the use of restraint in schools. This is an important first step towards a more comprehensive understanding of the use of restrictive interventions.

While the Commission welcomes this measure, we consider that the rights of both students and teachers would be better protected by establishing a system of reporting and monitoring that ensures independent oversight.

Victoria already has the infrastructure for this through the Office of the Senior Practitioner, who is generally responsible for ensuring that the rights of people who are subject to restrictive interventions are protected. The Senior Practitioner has extensive powers to set standards and guidelines and to monitor and direct disability service providers in relation to the use of restrictive interventions.⁷⁴⁶

In regard to the use of physical restraint, additional rules apply. As of 1 January 2012, physical restraint against a person with disability can only occur with the prior approval of the Senior Practitioner, except in situations where physical restraint is necessary in an 'unplanned emergency' or in a 'duty of care' exception.⁷⁴⁷ Specific types of physical restraint, such as pin-down techniques, are also prohibited. The rules apply to all disability service providers defined in the Disability Act but do not apply to schools.

Oversight to ensure compliance with international obligations

Children with a disability are entitled to and required to attend school. However, the legislative framework that governs how children with a disability are treated in a school is complex. The duty of care on education authorities and teachers reflects a range of legislative obligations at a national and state level. These rights and protections reflect the obligations in international human rights instruments including the:

- *Convention on the Rights of the Child* – which protects children from all forms of physical or mental violence, injury or abuse and maltreatment and requires that children with disabilities should enjoy a full and decent life in conditions that ensure dignity and promote self reliance.⁷⁴⁸
- *Convention on the Rights of Persons with Disabilities* – which requires that the best interest of the child be the primary consideration in all actions concerning children with a disability, and that people and children with a disability enjoy the right to security and liberty of person and to be free from cruel, inhuman or degrading treatment and torture.⁷⁴⁹
- *The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) which requires that countries implement a system of regular visits to places of detention – that is places where people are deprived of their liberty.⁷⁵⁰

⁷⁴⁴ Key informant interview, Student Wellbeing and Engagement Division, DEECD.

⁷⁴⁵ Department of Education and Early Childhood Development, 'School policy and advisory guide: safety response- restraint', above n 695.

⁷⁴⁶ <<http://www.dhs.vic.gov.au/for-individuals/your-rights/offices-protecting-rights/office-of-the-senior-practitioner>> at 29 June 2012.

⁷⁴⁷ Office of the Senior Practitioner, above n 623, 6.

⁷⁴⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, arts 19,23 (entered into force 2 September 1990).

⁷⁴⁹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, art 7,14,15 (entered into force 3 May 2008).

⁷⁵⁰ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, A/RES/57/199, art 19,20 (entered into force 22 June 2006).

Arguably schools, and in particular specialist schools, are places where children are deprived of liberty both by fact that children are required to attend school and schools are able to limit both access to the school and a child's ability to leave the school. Schools are places where children with a disability may be detained through the practice of seclusion or isolation. It has been reported that some schools have facilities specifically for the purpose of detaining or restraining children with a disability⁷⁵¹ which arguably means they are places of detention for the purposes of OPCAT.

At this time, no existing oversight body has inspection rights over Victorian specialist schools, or schools generally where children with a disability may be detained through isolation or seclusion. Thus while Australia's consideration of OPCAT means that people in aged care facilities, prisons and detention centres, and children in out of home care facilities would be covered by the OPCAT provisions, there are no clear mechanisms for the same bodies to inspect those schools where children may be deprived of their liberty through seclusion or restraint.⁷⁵²

Arguably, schools are sites where children are deprived of their liberty given they are unable to leave between certain hours, or without being accompanied by a parent or responsible adult, and given they are places where vulnerable children may be subject to cruel, inhuman or degrading treatment – including seclusion or other practices. This is a matter worthy of further consideration in considering current oversight mechanisms and in considering the implementation of OPCAT in Australia.

Generating costs savings and human rights gains through independent monitoring

If restrictive practices are to be used in school settings, schools will benefit from the lessons learned from the disability sector, including the experience of public scrutiny, subsequent research and practice advancement over the five years since the Office of the Senior Practitioner was established.

⁷⁵¹ See Principals' Association of Specialist Schools, above n 631, 3-4.

⁷⁵² These bodies could include the Victorian Ombudsman, the Office of the Senior Practitioner, the Disability Services Commissioner, the Child Safety Commissioner and the Australian Human Rights Commission.

The role of the Senior Practitioner to monitor the use of restrictive interventions in disability services has made a measurable contribution to the reduction in the use of seclusion and restraint in disability services. This has delivered significant improvements for the human rights and dignity of people with disabilities and potentially may also lead to cost savings for disability services over time.⁷⁵³

Mandating positive behaviour plans

The problem is that restrictive practices such as restraint and seclusion may provide at best a short-term solution to stopping a behaviour, but cannot resolve any underlying issues over time and, at worst may result in psychological and physical trauma.⁷⁵⁴

The *Restraint of Student Policy* mandates that support must be provided to parents and students after an incident, including through the SSG. This is welcome. It also makes reference to separate policy advice on preventing endangering behaviour and promoting positive behaviours under the *Effective Schools are Engaging Schools – Student Engagement Policy Guidelines*.⁷⁵⁵

This is also welcome. However, the policy could be strengthened and include a more preventive focus by stating that the use of restraint can be prevented by understanding critical behaviour triggers and ensuring that all students who display behaviours of concern should have a positive behaviour support plan in place.

⁷⁵³ This is confirmed by international evidence, including a US study that reported that the implementation of a restraint reduction initiative was associated with 'a reduction in the use of restraint, staff time devoted to restraint, and staff-related costs. This shift appears to have contributed to better outcomes for adolescents, fewer injuries to adolescents and staff, and lower staff turnover. The initiative may have enhanced adolescent treatment and work conditions for staff.' Janice LeBel and Robert Goldstein, 'The economic cost of using restraint and the value added by restraint reduction or elimination', (2005) 56 (9) *Psychiatric Services* 1109–1114, 1114.

⁷⁵⁴ Webber, Richardson, Lambrick & Fester, above n 754, 3.

⁷⁵⁵ Department of Education and Early Childhood Development, 'Student engagement policy guidelines', above n 434.

At a minimum, if a student has been subject to restraint or seclusion based on behaviour then the policy should require that a behaviour support plan be put in place. Data from our research suggests that these plans are used in some schools very effectively. There is no reason why this practice could not be guaranteed by departmental policy or legislation. Mandatory behaviour plans would also be consistent with requirements under the Disability Act and international jurisdictions.⁷⁵⁶

In the United States, every student with additional learning needs arising from their disability is entitled under law to have an individual education program. If the child faces behavioural challenges, this program must include a 'Behaviour Intervention Plan'.⁷⁵⁷

Potentially, existing Victorian guidance could be strengthened by legislating that a positive behaviour support plan must be in place for a student with disability who is at risk of, or has been subject to a restrictive intervention. This should also extend to students with disabilities who have been suspended, expelled or placed on reduced attendance due to behaviour.

This would reinforce existing policy directions in promoting effective behaviour management, and encourage more consistency in how schools approach this task. Further, if such behaviour plans were mandatory, school leadership would be in a stronger position to advocate for professional development and other resources to ensure compliance at a school level.

Improving behaviour support plans

Evidence shows that the quality of behaviour support plans reduces the use of restraint and seclusion. A recent Victorian study of 198 behaviour support plans in disability services showed that individuals with high-quality plans were found to be subjected to less restrictive interventions over time, while those with low-quality plans were subjected to more restrictive interventions. Central to the quality of these plans was inclusion of elements such as targeted positive interventions that focus on the individual's learning and needs, attention to environmental factors, use of a team approach and timely reviews.⁷⁵⁸

The Commission notes that Office of the Senior Practitioner has developed an electronic template for behaviour plans for use in disability services, which prompts the behaviour support team to respond to important components of support.⁷⁵⁹ Potentially, this could be adapted for schools.

⁷⁵⁶ This specifies that all people who receive a government funded disability service and who are subjected to a restrictive intervention must have a behaviour support plan (referred to as a 'behaviour management plan' in the Act. See: *Disability Act 2006* (Vic) s 141.

⁷⁵⁷ Section 504 of the *Americans with Disability Act* requires an individual education program. This must include information about the student's needs and what services will meet those needs. This means that the problem behaviour will be considered part of the disability and must be addressed by the behaviour intervention plan. For information regarding the inclusion of Behaviour Intervention Plans see e.g. <<http://www.courts.ca.gov/courts.html/1106.htm>> at 25 July 2012.

⁷⁵⁸ Webber, Richardson, Lambrick & Fester, 'Quality of behaviour support reduces restraint and seclusion' (unpublished) 2–3.

⁷⁵⁹ Key Informant Interview, Office of the Senior Practitioner, Department of Human Services.

Recommendations

Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

24. The use of restrictive interventions in Victorian schools be regulated in the following manner:

- c) That the *Education and Training Reform Act 2006* and the *Disability Act 2006* be amended to provide that regulation of restrictive interventions in Victorian schools (including Catholic and Independent schools) be transferred to the jurisdiction of the Office of the Senior Practitioner, Department of Human Services. **This is the Commission's preferred option.**
- d) That, in the interim, the DEECD *Restraint of Student Policy* be amended to expressly state that:
 - The use of seclusion in government schools is prohibited
 - That whenever a restrictive intervention is used by a school that the parent must be notified
 - That whenever a restrictive intervention is used that the student support group be convened to review the incident and put in place a plan to minimise the risk of such an intervention being used again.
 - That parents have the right to bring an independent third person or expert to the student support group to consider the incident.
 - That if restrictive interventions are contemplated that these are included in the student's individual learning plan, and that this must be submitted to the regional disability coordinator.
 - That whenever a restrictive intervention used, it must be reported as a critical incident to the Emergency Management Unit, Department of Education and Early Childhood Development, and that this critical incident report must be passed to the Student Wellbeing Division so that they may monitor the frequency of restrictive interventions in government schools.

and, that the Catholic Education Office develop and implement a policy on restrictive interventions, consistent with the DEECD *Restraint of Student Policy* (as amended above).

25. The WorkSafe *Guide to challenging behaviour risk prevention in specialist schools* be revised in consultation with the Office of the Senior Practitioner to ensure consistency with rights protected by the *Charter of Human Rights and Responsibilities Act 2006* and anti-discrimination laws.
26. The *Education and Training Reform Act 2006* be amended to provide that any student subject to a restrictive intervention must have a positive behaviour plan put into place and its implementation monitored.
27. That, building on the Principals' Association of Specialist Schools project on effectively responding to challenging and extreme behaviour, the Office of the Senior Practitioner on-line behaviour plan tool be adapted for use in all Victorian schools.
28. Noting that positive behaviour support is more effective, that schools report to the relevant education authority, the name and details of organisations providing training to school staff on behaviour management, including where such training includes use of restraint and seclusion. This information should include details on the training courses or modules proposed to be delivered.

Chapter 11: Transport

Main findings

- More than one in four students with disabilities reported problems accessing and using transport. Parents had a similar dissatisfaction rate.
- Some students are travelling for many hours on buses to get to and from specialist schools. Being denied food, water and toileting facilities on these buses violates their dignity and their rights.
- Some students attending specialist schools are ineligible for bus transport when they live outside the school's zone. However, they may have no real choice on this matter if a closer school is unwilling or unable to make the necessary adjustments to facilitate each student's education.
- There is a lack in discretion in how eligibility criteria are applied to programs that may assist students with disabilities getting to and from school. This may amount to indirect discrimination.

Transport policy and provision for students with disabilities

Aside from concession fares on public transport, which may not be an option for some students with disabilities, there are three main ways a student with disability can access transport assistance to get to and from a government school.⁷⁶⁰

Students attending mainstream schools in regional Victoria and some parts of outer metropolitan Melbourne may use free school buses under the School Bus Program. Under criteria set by the Department of Education and Early Childhood Education (DEECD), the student must attend the

⁷⁶⁰ Students attending Catholic and Independent schools are also eligible for concessionary fares on Victorian public transport. Guidelines for concession fares can be found at <<http://ptv.vic.gov.au/fares-tickets/concessions/students/>> at 27 July 2012.

closest government school to the family home. Public Transport Victoria procures and contracts the services with bus companies. Coordinating principals are responsible for coordinating and approving all applications for permission to travel on a school bus service. This includes students attending government and non-government schools.⁷⁶¹

Transport assistance for students with disabilities attending mainstream schools is also available under the Conveyance Allowance Program (CAP), provided that eligibility criteria are met. An allowance of up to \$2,000 per annum is available to assist with travel costs.⁷⁶² This program is administered by schools and the Student Transport Unit of DEECD.

Under the CAP, the first eligibility criteria to be met is that the school being attended is not located within metropolitan Melbourne. Once this criteria is met, 'appropriate school' is used to determine if a student is eligible to receive assistance. 'Appropriate' has the following definitions within the CAP:

- If attending a government mainstream school, then 'appropriate' refers to the school year level the student is enrolled in (i.e. primary, secondary or P–12 school). This definition applies to all students attending mainstream schools – the definition does not differentiate on the basis of disability

⁷⁶¹ State of Victoria, Department of Education and Early Childhood Development, *Student Transport Contract Bus Procedural Guidelines: Rural and Regional* (July 2011) 11. <www.eduweb.vic.gov.au/edulibrary/public/schadmin/schops/Resources/conveyance/Student_Transport_School_Contract_Bus_Procedural_Guidelines_Rural_and_Regional_Jul11v2.pdf> at 3 July 2012.

⁷⁶² State of Victoria, Department of Education and Early Childhood Development, *Procedural Guidelines Student Transport: Conveyance Allowance* (April 2012). <www.eduweb.vic.gov.au/edulibrary/public/schadmin/schops/Resources/conveyance/Conveyance_Procedural_Guidelines_April_2012_v1.0.pdf> at 3 July 2012.

- If attending a non-government mainstream school, then 'appropriate' refers to the denomination of the school enrolled in (e.g. Catholic, Anglican). This definition applies to all students attending mainstream non-government schools – the definition does not differentiate on the basis of disability
- If attending a specialist school, then appropriate refers to the primary disability of the student and the cohort of students the specialist school is intended to support. For example, for a student who has established eligibility for the Program for Students with Disabilities (PSD) under the autism spectrum disorder category, an appropriate specialist school is one established to provide specialist programs for students with autism spectrum disorder. Generally all specialist schools have Designated Transport Areas (DTAs) mapped around them that define 'closest'.⁷⁶³

While generally a student must attend the 'closest appropriate' school to be eligible for a conveyance allowance, the CAP guidelines do provide for some exemptions.⁷⁶⁴

Further, while a conveyance allowance is not generally payable to students attending mainstream schools located within metropolitan Melbourne, students with severe disabilities or who are blind are able however to apply for a conveyance allowance of up to \$2000 per annum if they need to travel by taxi to and from school.⁷⁶⁵

For students with disabilities attending a specialist school, transport assistance may also be provided through the Students with Disabilities Transport Program (SDTP) and the CAP. The SDTP provides bus or taxi transport.⁷⁶⁶ CAP payments are provided to some 900 students attending special schools.⁷⁶⁷

Eligibility for specialist school bus travel under the SDTP is set out in the *Transport for students attending specialist school procedural guidelines*. These state that the student must be approved for PSD funding, attend the specialist school at least three days per week and meet other eligibility criteria.⁷⁶⁸

Summarised on the DEECD website the guidelines note that:

To be eligible for travel support, students must reside within the designated transport area of the school that they attend. Transport networks do not extend beyond the designated transport area so students residing in other areas will need to arrange independent travel if they wish to attend a specific location.⁷⁶⁹

If the student lives within the designated travel area, but less than 4.8 kilometres from the school, the student 'may receive transport assistance if they are unable to access the school through private travel arrangements'.⁷⁷⁰

All students receiving SDTP transport assistance must have an Individual Travel Plan.⁷⁷¹ DEECD informed the Commission that:

Planning for the SDTP is a multi-faceted task. It involves the challenge of catering for students with a wide range of physical and intellectual disabilities and complex transport planning. A range of people, including parents, school principals, bus operators and the STU of DEECD all have roles and responsibilities in the program. For example if bus travel is not appropriate for a particular student then the school and STU would assess the utility of a taxi service or a CAP payment to parents to assist meeting private travel expenses.⁷⁷²

⁷⁶³ Information provided to the Commission by Student Transport Unit, DEECD 1 August 2012.

⁷⁶⁴ These include if enrolment at their nearest government school has been refused due to the nearest school not having sufficient enrolment capacity or if the student is attending their nearest recognised special setting. Information provided to the Commission by Student Transport Unit, DEECD 1 August 2012.

⁷⁶⁵ Information provided to the Commission by Student Transport Unit, DEECD 1 August 2012.

⁷⁶⁶ In addition, some specialist schools have purchased their own buses which are used for school activities. Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁷⁶⁷ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁷⁶⁸ State of Victoria, Department of Education and Early Childhood Development, *Transport for students attending specialist school procedural guidelines* (2011) 14.

⁷⁶⁹ <www.education.vic.gov.au/management/schooloperations/studenttransport.htm> at 3 July 2012.

⁷⁷⁰ Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 14.

⁷⁷¹ Ibid 10.

⁷⁷² Information provided to the Commission by Student Transport Unit DEECD, 29 June 2012.

In 2011, around 7500 students of specialist schools received travel assistance under the SDTP, across 77 schools.⁷⁷³

Taxi services are also provided to around 100 students. They are 'normally provided in 'overflow' circumstances where due to logistical and affordability reasons the procurement of an additional bus service is not economically feasible. Around thirty taxi services are contracted under the SDTP'.⁷⁷⁴

Student experiences of accessing transport

Among all students with disabilities surveyed by the Commission, the most common means of getting to and from school was by car, followed by bus and then train. However, students attending specialist schools were much more likely to travel by bus.

When asked about the time taken to get to and from school, just over half the students reported a journey time of less than 30 minutes. Around a quarter reported a journey of between 30 and 60 minutes. The remaining quarter of students spent more than an hour travelling to school.⁷⁷⁵

Of the 59 students who discussed their transport experiences in our survey, 17 (28.8 per cent) reported difficulties. The majority of these students attended mainstream schools and were largely reliant on public transport. This presented difficulties for some students, including lack of wheelchair access, unreliability of services and the time involved in getting to school.

Deaf students at the 'have a say' session raised a number of specific challenges when using public transport, such as transport providers only providing verbal information when trains were cancelled or diverted.⁷⁷⁶

In addition, the deaf students discussed problems associated with taxi transport, reporting that where deaf students were previously eligible for taxi subsidies, this was no longer the case unless there were exceptional circumstances. This issue was also raised by the Victorian Aboriginal Disability Network critical friends group.⁷⁷⁷

Other participants talked about how leading deaf facilities in schools could not be accessed because of transport difficulties in the regions:

We have a great deaf facility in school, but kids can't get there because of transport. We end up with hundreds of kids being supported by the visiting teacher service instead. If a deaf child goes to a mainstream school they get a travelling teacher five hours a week. If they go to a school with a deaf facility they get a deaf teacher for every four students enrolled.⁷⁷⁸

Parent perspectives

When parents were asked to discuss their child's transport options to and from school, a broadly similar pattern of transport modes and travel times emerged.

Of the 605 parents who answered this survey question:

- 58 per cent reported that the primary mode of transport to school for their child is by car
- 17 per cent walked or rode a bike
- 16 per cent travelled by special school bus
- 7 per cent travelled by public bus.⁷⁷⁹

⁷⁷³ That is approximately 80 per cent of students attending government specialist schools. In addition, 'a small number of special schools (7) directly operate subsidised bus services (17), due to an unavailability of contract providers in their geographic location. The same eligibility criteria and service requirements apply to these services as with the services provided by private bus operators'. Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁷⁷⁴ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁷⁷⁵ Out of 60 students, 32 students (53.3 per cent) had a journey time of less than 30 minutes. Fourteen (23.3 per cent) students had a journey time of 30 to 60 minutes and another 14 students travelled for more than one hour.

⁷⁷⁶ HASD 15.

⁷⁷⁷ HASD 7, 9, 15.

⁷⁷⁸ HASD 9.

⁷⁷⁹ 336 travelled by car, 98 walked or rode, 92 caught a special school bus, 39 used a public transport bus. The remainder travelled by train (11), tram (3) or taxi (2).

Inaccessibility of public transport leads to reliance on car transport

Some parents said they would prefer that their child enjoy their independence and use public transport to get to school but are unable to do so because of accessibility issues or previous experiences of bullying. For those in regional Victoria, public transport is largely non-existent:

It would be impossible for him to get from our home to his school by any form of public transport; the travelling time would be over two hours one-way. This school is the only one that would accept him, therefore he is driven to school and back every day.⁷⁸⁰

It is three bus changes from our home to his school which is only a 15 min car drive. He wouldn't physically cope with three changes.⁷⁸¹

Communication on the bus is not provided to her, she can't even hear what is going on. She is teased and bullied on the bus, so I drive her.⁷⁸²

There is no public transport near where we live. We live 14 km from the school, so he cannot walk or ride his bike. When he was in grade Prep, we asked about travel compensation but they said no as there is a bus that the school can organise. But it is not a direct route, there is no direct supervision so I did not take this option.⁷⁸³

Our autistic daughter is too naive to use public transport safely. There is no special school bus.⁷⁸⁴

Eligibility for specialist school buses – zoning rules

Although specialist schools usually have a bus that students can access, if a student lives outside the school's geographic zone – the 'designated transport area' – then the bus service is not provided.⁷⁸⁵

For many parents who felt forced to enrol their child in a school out of zone due to lack of reasonable adjustments at more local schools, this eligibility rule seems unfair and unduly burdensome.

⁷⁸⁰ Parent of student attending an Independent school. Parent survey participant.

⁷⁸¹ Parent of student attending a Catholic school. Parent survey participant.

⁷⁸² Parent of student attending a Catholic school. Parent survey participant.

⁷⁸³ Parent of student attending a Catholic school. Parent survey participant.

⁷⁸⁴ Parent of student attending a Catholic school. Parent survey participant.

⁷⁸⁵ The Commission notes that taxi transport may be provided; however, parents in our study facing the problem of being out of zone did not report taxis being available or offered.

Arguably, the blanket application of the zoning rule may amount to indirect discrimination in cases where the child with disability suffers a disadvantage (not being able to get to school) and the condition (the zoning rule) is unreasonable:

DEECD told me I had to go to a school in zone. I heard about this school [out of zone]. I came and looked, I wanted to come here straight away – I felt something special, welcome and comfortable. I had never felt that at another school. I brought my son here to look. He said, 'I'm going to that school'. We faced a big hurdle to jump – transport. So I drive him an hour each way.⁷⁸⁶

Some parents reported that, as their child was on a dual enrolment and only attended the specialist school two days a week, they were ineligible for the specialist school bus.⁷⁸⁷ The *Transport for students attending specialist school procedural guidelines* state that a student on less than 0.6 enrolment 'may be permitted to travel on existing services if places are available. Such students cannot be counted to establish, extend or maintain a transport service'.⁷⁸⁸ The Commission is concerned that the blanket application of this policy may lead to indirect discrimination against students who may be dual enrolled and attending the specialist school for less than the minimum 0.6 period for whom there is no empty seat on the bus.

Other parents reported that the time spent taking their child to school was impacting on their employment. For many, the cost of petrol or taxis was prohibitive, especially for those on a low income.⁷⁸⁹ In one case, a parent who had escaped domestic violence was at risk of losing an offer of permanent housing because to accept it would mean she would remain in the wrong school zone and continue to be denied access to the school bus.

I have just moved schools and cannot access the bus as it is out of zone. It is placing enormous stress on my family. The schools in our zone are not the most appropriate for my son's needs and would not lead to the best outcome in both my opinion and the opinions of the professionals involved with him.⁷⁹⁰

⁷⁸⁶ HASD 14.

⁷⁸⁷ Parent survey participant.

⁷⁸⁸ Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 14.

⁷⁸⁹ See e.g. HASD 4, 7 and 14.

⁷⁹⁰ Parent of student attending a government mainstream school. Parent survey participant.

We are not in the Department of Education bus zone for his specialist school even though it is the closet specialist school to where we live.⁷⁹¹

Significant financial and time commitment, if our son was not Autistic we would have a choice of local schools to select from yet we are not zoned for a specific school.⁷⁹²

My child is not eligible for the special school bus as he is on oxygen. This means I have to spend up to 4 hours a day transporting him to and from school. If we need to use a taxi it's a \$140 round trip from the house to school and return.⁷⁹³

Travel times for students for disabilities

There has never been a problem getting a spot on the bus as long as we are prepared to have him on the bus for three hours a day.⁷⁹⁴

Although one in four parents reported problems accessing or using transport to school, travel times were better in the parent survey sample than in the student survey.⁷⁹⁵ Around three-quarters of respondents reported that their child's journey was less than 30 minutes. Less than 10 per cent reported a journey time of more than one hour.⁷⁹⁶ Nevertheless, problems with long journey times were a strong theme in the survey and 'have a say' days, particularly for parents of students attending specialist schools and for those living in rural and regional Victoria. Excessive travel times on specialist schools buses were also noted in submissions.

⁷⁹¹ Parent of student attending a government specialist school. Parent survey participant.

⁷⁹² Parent of student attending a Catholic school. Parent survey participant.

⁷⁹³ Parent of student attending a government mainstream school. Parent survey participant.

⁷⁹⁴ Parent of student attending a government specialist school. Parent survey participant.

⁷⁹⁵ 153 out of 586 (26.1 per cent) parents reported problems. This is marginally better than the student reporting rate of 28.8 per cent.

⁷⁹⁶ Of 575 parents who answered this question, 422 (73.4 per cent) reported an average journey time of less than 30 minutes, 102 (17.6 per cent) reported their child's journey time being between 30 minutes and an hour. Fifty-two (nine per cent) reported a journey time of more than one hour.

The Disability Discrimination Legal Centre submitted:

Due to special schools being located in geographically dispersed locations throughout the state, transport to and from them is more difficult as opposed to a student with a disability attending their local school ... The State of Victoria contracts private bus companies to provide a pick up and drop off service for students with disabilities who attend special schools. However, the resources in the program are scarce, as a result students can be subjected to up to four hours of travel on such buses per day. This lengthy travel is not caused by the fact that the students live far away, but because buses make frequent stops. Consequently, it is common-place for a 15 minute car trip to take 2 hours on a bus.⁷⁹⁷

You cannot get the best out of a child that has been on a bus for two hours. It is why they have behavioural problems when they get to school. They are tired and hungry by the time they get to school. There is only a token amount of funding and they don't care how long the kids have to sit on the bus.⁷⁹⁸

Parents confirmed these long travel times:

To access the school bus my child would be picked up 1½ hours before school and the same coming home. For me to drive it takes 5 minutes. Children with special needs should travel no more than 1 hour on school buses. It is unfair and effects their health and development when travelling longer.⁷⁹⁹

It takes my son nearly one and a half hours to get to school and that frustrates him and adds to his fatigue. There is a closer school but is public and he doesn't qualify for support in that system.⁸⁰⁰

Under the *Transport for students attending specialist school procedural guidelines*, the maximum travel period for a student on a bus is two hours.⁸⁰¹

⁷⁹⁷ Submission 7, Disability Discrimination Legal Centre, 23.

⁷⁹⁸ Parent of student attending a government specialist school. Parent survey participant.

⁷⁹⁹ Parent of student attending a government specialist school. Parent survey participant.

⁸⁰⁰ Parent of student attending a government specialist school. Parent survey participant.

⁸⁰¹ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

DEECD informed the Commission that:

Bus routes are designed annually to ensure travel times for all students are constrained to less than two hours and are reasonably accessible to families ... A recent evaluation of route optimisation in 2011–12 has shown that in general DEECD provides an efficient service in terms of time travelled. For over 90 per cent of the students receiving bus travel under the SDTP the travel time is less than 1.5 hours.⁸⁰²

However, the Commission notes that this same data shows that one in three students travelling by specialist school bus are travelling for more than one hour each way.

Figure 6: DEECD data on travel times on specialist school buses

Travel time	% of students
Less than 30 minutes	26.5
Between 30 – 60 minutes	38.8
Between 60 – 90 minutes	26.1
Between 90 minutes – 2 hours	8.6
Over 2 hours	0.0
Total	100

Driver attitudes and behaviour

Several parents in our research made mention of the lack of supervision on the bus. Other responses noted concerns about the level of patience and understanding displayed by the bus driver:

The bus which goes from our house to her school refused to take her repeatedly. If the bus was crowded she would be told she can't fit with her wheelchair. At school times, it is frequently crowded. Not all buses are wheelchair accessible, in fact less than 50 per cent, so she really needed to get on those that were. Some drivers would actually lie and say it is not accessible when she could see the ramp right there; they just didn't want to get out and put the ramp in place.⁸⁰³

My child is consistently told off by a particular bus driver, he feels that she does not listen appropriately, and has more than once had her in tears, on two occasions I have had to follow this up with the school, who directed me to the bus company directly.⁸⁰⁴

The bus driver yelled at him because he sat in the wrong spot on the bus. I attempted to contact the bus company to explain that he didn't understand that he had sat in the wrong spot, but was totally ignored by the company and had to ring the assistant principal at the school and have him intervene on my behalf to the bus company and explain my son's disabilities.⁸⁰⁵

On two separate occasions my child has been left waiting on the side of the road for over 90 minutes. On both occasions it was my child who called me from his mobile phone. The school did not call me on either occasion to let me know that the bus had broken down. I also had an issue with the bus chaperone dropping my child off some blocks away from his bus stop in punishment for not being able to express to the new bus driver where his stop was the day before.⁸⁰⁶

For many of these parents, concerns about how their children were being treated on the bus service came down to a lack of understanding from staff about disability.

803 Parent of student attending a government mainstream school. Parent survey participant.

804 Parent of student attending a government mainstream school. Parent survey participant.

805 Parent survey participant.

806 Parent of student attending a government specialist school. Parent survey participant.

802 Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

Physical conditions on the bus

Parents described to the Commission the poor physical conditions of the buses their children use, sometimes as result of the age of the vehicle. Other buses were said to not be fit for purpose:

Trouble using transport because the bus windows are very high and not tinted so in summer my child suffers from heat stress to the extent that it takes him 30 minutes to cool down to a normal temperature when dropped off at school.⁸⁰⁷

My child has cerebral palsy and there are no disabled seats on buses in Victoria.⁸⁰⁸

Bus has broken down on a few occasions and replacement does not have wheelchair access.⁸⁰⁹

She uses an electric scooter and was told that she was not allowed to use this on one bus. This was quickly sorted out. At another time, the driver went around through a round about too fast and causing the scooter to tip and my daughter fell out.⁸¹⁰

Dignity of students when travelling

A number of parents also expressed serious concern about conditions on buses that they believed were degrading, in particular that children had no access to toileting facilities when travelling for long periods of time:

When I requested that a system be established to be able to access a toilet if necessary the school suggested that he have no drinks in the pm prior to going on the bus. Other suggestions included putting him in a nappy. When his parents stated that the believed both of these strategies were inhumane and degrading they were informed that the only other intervention possible was to provide an absorbent towel in the event of a repeat situation again.⁸¹¹

My son used to travel 1.5 hours to [name of specialist school] which is 30 minutes away. I complained that he is not able to eat/drink on the bus and could have a poo at some stage and have to sit in it for an hour. This is unacceptable treatment for any human being. We have now received a better time on the bus schedule, but some other poor kids are travelling for hours.⁸¹²

807 Parent of student attending a government mainstream school. Parent survey participant.

808 Parent of student attending a government specialist school. Parent survey participant.

809 Parent of student attending a government specialist school. Parent survey participant.

810 Parent of student attending a government specialist school. Parent survey participant.

811 Parent survey participant.

812 Parent survey participant.

On any measure, travelling four hours a day to attend school for six hours is unreasonable. If students are denied toileting, food and drink during this time, then remaining on a bus in these circumstances offends their dignity and breaches their rights.

Service inflexibility

Several parents complained of inflexibility about where buses can travel, their pick-up and drop-off points and the availability of accessible buses for school events, such as excursions and sport. Non-availability of transport when the child was in respite was also identified as a problem, even though DEECD policy clearly allows children to be collected from respite facilities.⁸¹³

Currently my child spends alternate weeks in respite facility. The Victorian Government only allows you to access the bus from one pick up point. Also you must use the bus a minimum of 6 times per fortnight. Because of this rule my son is denied access to school bus program. The bus from home pick up has over 20 empty seats, the bus that drives past the respite house has 15 empty seats.⁸¹⁴

My child has to spend just under 4 hours per day on the school bus travelling to and from [name of town]. My child is NOT ALLOWED to hop off the school bus and walk up the country street to our home. Therefore, her parents cannot both work as someone needs to be at the bus stop at 4.50 pm to 'pick her up' even though she is perfectly capable of walking up the road and does it on her own on a weekly basis.⁸¹⁵

The bus can arrive at anytime from 7.13 am to 7.15 am with no explanation or warning, yet the three minute window we have to meet can be very difficult to meet with a child with a disability.⁸¹⁶

813 'Students may be dropped off/picked up within their existing bus route if it does not adversely affect the travel schedules of other students and where this does not present an additional cost to the department.' Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 15.

814 Parent attending a government specialist school. Parent survey participant.

815 Parent of student attending a government mainstream school. Parent survey participant.

816 Parent of student attending a government specialist school. Parent survey participant.

Being banned from the bus

Parents described the impacts of public transport being withdrawn due to behavioural issues. A common element in all of these stories was a lack of training for bus drivers on managing challenging behaviours of students with disabilities, as well as an apparent absence of positive behaviour strategies. In some cases, parents reported the use of mechanical restraints on their child. However, when positive behaviour strategies were used, better outcomes could be found over time:

Our son has experienced many difficulties using the specialist school bus. He spends approximately three hours each day travelling to and from school on the bus. The Bus Drivers and Chaperones seem to have little understanding or training as Disability Support Workers. There are times this has resulted in physical assault of transport staff and students. Our attempts to resolve issues around behaviour management strategies on buses were repeatedly met with the response that 'transport is a privilege not a right' and we are lucky to have the service at all.

When our son was regularly removed during transport the bus would stop until we could leave work and collect him from the side of the road. This would take a minimum of 30 minutes to reach and resulted in [making] all other students and families on the bus late. The act of removing him from the bus served to reward his behaviour as getting off the noisy and uncontrolled bus was exactly what he was trying to communicate.

Attempts to establish behavioural triggers, events and explore alternative strategies were dismissed as our son's behaviour was described as 'unpredictable' without any documentation or efforts to assess the situation. The only solution offered to our son was physical restraint (a special seat belt that he could not get out of) or not travelling on the bus. In the end we agreed to provide the bulk of his transport needs to and from school in the family car and pushed for the school to support him with independent travel training using the public bus. Over the course of a year, with support from his integration aide, he regularly and successfully caught a public bus without incident.⁸¹⁷

⁸¹⁷ Parent of student attending a government specialist school. Parent survey participant.

Opportunities for improvement

Support for students with disabilities accessing public transport

The Commission notes that 'travel training' is undertaken by many state specialist schools, which involves a period when the school provides a trained adult (for example, an integration aide or teacher) to show the student with disability how to use public transport. This includes the adult accompanying the student on the public transport mode to and from school until the student has the capacity to travel without assistance.⁸¹⁸ This is very welcome. Consideration should also be given to extending this scheme to provide financial support for attendant care or other supports to facilitate independent travel by students.

It is currently unclear as to whether such support can be funded by the Department of Human Services under an Individual Support Package or, alternatively, through CAP funding. Even if the latter could be used, the relatively small amount available of \$2000 would not cover many instances of support.

Greater discretion in zoning rules for specialist school buses

The Commission notes that parents may appeal the decision to refuse access to the specialist school bus under the SDTP. Appeals are considered by a Special Cases Transport Consideration Panel established by DEECD, which meets every six to eight weeks. DEECD's Chief Finance Officer chairs the panel and other panel members are representatives of the Student Transport Unit, the Student Wellbeing Branch and two principals from schools that include specialist school programs. The panel considers appeals related to decisions for both the CAP and SDTP.⁸¹⁹

However, grounds for appeal are limited and the parent must seek the support of their school or DEECD region before submitting an application. The *Transport for students attending specialist school procedural guidelines* state:

⁸¹⁸ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁸¹⁹ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

It is important to note that special case consideration only applies in circumstances where factors around transport are particularly challenging or complex. Applications involving simple circumstances of ineligibility, financial circumstances and matter relating to educational or residential choice will not be considered by the panel.⁸²⁰

Similarly, special case approval for the CAP can only be considered if the application falls into specified categories.⁸²¹

Given the challenges parents report in finding a school that is able to make the necessary reasonable adjustments required under law to accommodate their needs of their child, it seems unreasonable to apply a blanket policy on zoning that is incapable of review on 'educational or residential choice'. From the perspective of parents, there is no real 'choice' about which school their child can attend. Potentially, the blanket application of this policy could amount to indirect discrimination under the Equal Opportunity Act and a breach of section 8 of the Charter, which protects the right of equality before the law, and section 17(2) which protects the best interests of the child.

These issues could be resolved by providing specialist school principals with more discretion to address special circumstances, in particular, where the child is unable to be accommodated at another school or where there is no appropriate specialist school in the local area where the child lives. Currently '[t]he school principal can make representations to the Special Cases Transport Consideration Panel if exceptional circumstances exist.'⁸²² However, he or she is not the decision maker, nor does DEECD have any discretion to consider such special circumstances within the current appeals system.⁸²³

820 Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 16.

821 Department of Education and Early Childhood Development, 'Conveyance Allowance Guidelines', above n 762, 15.

822 Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

823 'However the STU will request detailed information and local knowledge from regional offices when issues and appeals are being considered'. Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

Driver and supervisor/chaperone training

The Special School Bus Service (SSBS) contract outlines the minimum training that drivers of special school buses are required to have. This contract requires operators to ensure that all drivers hold a valid Working with Children Card at all times; participate in any training offered by the relevant school or DEECD; and receive appropriate training in relation to:

- service requirements of passengers with disabilities
- management of confrontational or difficult passengers and personal safety
- occupational health and safety issues.⁸²⁴

The *Transport for students attending specialist schools procedural guidelines* include requirements that bus service supervisors will secure wheelchairs in position; check that wheelchair brakes are on and electric wheelchairs are off; and activate wheelchair restraints.⁸²⁵

Under these guidelines, it is also expected that schools will arrange training for service providers on topics including their roles and responsibilities, guidance on communication, safety obligations, consideration of each student travelling and relevant information about the student.⁸²⁶ The guidelines are silent on legal obligations in relation to discrimination and human rights however bus operators contracted by government (including government specialist school bus operators) are public authorities under the Charter and so bound by that law.⁸²⁷ All bus operators are bound by the Equal Opportunity Act and federal anti-discrimination laws.

824 'For mainstream school buses, the bus must ensure that the driver has been the subject of and successfully complied with all appropriate security checks as required by law, including the Working with Children check. The Operator must also ensure that drivers are properly trained, experienced and otherwise fit and proper, in relation to the duties to be performed. The Operator must ensure that, where required, the driver receives appropriate training in relation to the service requirements of passengers with disabilities i.e. wheelchair loading, harness etc.' Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

825 *Good Practice Guides and Safe Travel Fact Sheets* (section nine of the Transport for students attending specialist schools procedural guidelines) also provide direction to bus operators, schools and parents to ensure the safe travelling of students including the use of safety belts, harnesses and booster seats. Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

826 Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 24.

827 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(1)(c).

Given the concerns raised by parents in this research regarding conditions on buses, including allegations of discriminatory behaviours by some bus drivers, the Commission considers that the guidelines, contracts and training materials for this program should explicitly deal with discrimination. We would welcome the opportunity to review the training provided to bus drivers and to make recommendations about how this might be improved, including increasing knowledge and understanding of legal obligations under anti-discrimination law and the Charter.

Monitoring for human rights compliance

As part of this research, the Commission asked DEECD about auditing and inspection processes to ensure that students with disabilities using special school buses are not subject to any unreasonable conditions while travelling.

In its reply, DEECD indicated that compliance is monitored by the principal of each school. The SSBS contract includes monthly key performance indicator reporting, as well as incident reporting by the principal and/or bus operator. DEECD further reported that incidents that are not able to be resolved locally are investigated by the Student Transport Unit.⁸²⁸

If a parent or student has a complaint about a school bus, they can use the DEECD complaints process. The limitations of this process are discussed in Chapter 13.

Alternatively, they can raise the complaint directly with the Student Transport Unit or, in the case of a mainstream school bus service, with the regional office of Public Transport Victoria or the school bus coordinator employed by a state secondary school in the area.⁸²⁹

The Commission notes that the *Transport for students attending specialist school procedural guidelines* compel a school principal to notify the Student Transport Unit if they have 'concerns about the suitability of a driver'. However, no detail is given as to what such concerns might include.⁸³⁰ We consider that these guidelines would be strengthened by specifying that discriminatory behaviour or conduct that demeans a student with disability should be automatically notified to the Student Transport Unit.

Recommendations

29. The Department of Education and Early Childhood Development allow students who reside outside the designated transport area for a specialist school to be eligible for bus transport where the student is enrolled at that school in order to maximise participation in education consistent with anti-discrimination laws or in other circumstances relating to the best interests of the child.
30. The Department of Education and Early Childhood Development remove the requirement that a student must attend a specialist school six days per fortnight in order to be eligible for transport assistance as this discriminates against students with disabilities attending less than three days per week.
31. Consistent with the dignity and rights of students with disabilities, that the Department of Education and Early Childhood Development reduce the maximum travel period on specialist school buses to one hour each way.
32. The Department of Education and Early Childhood Development mandate that all schools must provide disability awareness, equal opportunity law and Charter training for all specialist school bus drivers and chaperones, as part of their induction and ongoing professional development.

⁸²⁸ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁸²⁹ Information provided to the Commission by Student Transport Unit, DEECD, 29 June 2012.

⁸³⁰ Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768, 12.

Chapter 12: Transition

Main findings

- The quality of transition between school stages for students with disabilities may be compromised by poor planning and inadequate sharing of information between schools.
- Programmatic boundaries between early years supports through the Early Childhood Intervention Service and school may lead to loss of educational and development opportunities for children.
- Funding reviews before entering secondary school may precipitate a step down in supports when a student with disability enters high school, even though the environment and curriculum may be more challenging in that new environment.
- Transfer from specialist primary schools to mainstream secondary schools appear to be common, however the range of supports offered for this transition may be inadequate for some students with disabilities.

Continuity in meeting students needs

Continuity in addressing the needs of students with disabilities was a strong theme to emerge from the Commission's research. In some cases, a lack of continuity arose when information about the specific needs of students with disabilities was lost due to inconsistent exchanges of information among all the teachers involved with the education of the child. In other cases, information and expertise in working with the student was lost when the student changed schools or progressed to the next stage in their education.⁸³¹

⁸³¹ In most cases this related to educational needs; however, in at least one case it involved important medical information. Parent survey participant.

⁸³² HASD 6.

You are led to believe that the information about your child's needs will follow through but it doesn't, you start again.⁸³³

Continuity of support can also be compromised because of misconceptions that the student's needs have been adequately met, which can sometimes result in supports being withdrawn.

Other participants told us that the late identification of needs or diagnosis of disability can result in a population of students with hidden disability, which leaves both the students and teachers in a situation where things are not working, but no one can articulate the changes necessary to improve things:

There are still kids being picked up in years 7, 8, 9 who have disabilities. This is where the behaviour gets in the way of having a decent look at the kid.⁸³³

I have to advocate and educate each new teacher.⁸³⁴

⁸³³ HASD 5.

⁸³⁴ Parent survey participant.

Starting school

Educators and parents shared a clear preference for effective intervention in the early years to support children and families and lay the groundwork for successful schooling.

For many parents, the culture, attitudes and practical supports offered by these services were of great value. However, other parents said they encountered barriers even when accessing kindergarten and other early childhood services:

Both my boys went to preschool. When we went to enrol my daughter with special needs they said they would have to put her on the list. They then said that they have no places when they realised that she would need extra help.⁸³⁵

Indigenous community members noted that in the Hume Region, Rumbalara Family Services, the Department of Education and Early Childhood Development (DEECD) and Scope have been working together to address the low numbers of Indigenous children accepted into the Early Childhood Intervention Service (ECIS) program.⁸³⁶ One participant expressed frustration about the lack of information-sharing about program:

We met with the Koori education and support officers (KESO) about ECIS. But the KESOs were not familiar with ECIS, despite it being in DEECD. If they don't know, how do they pass it on?⁸³⁷

Despite this, it was reported that the ECIS was using new strategies to improve take-up by Indigenous families and to build more effective transitions for children with disabilities from early childhood services and kindergarten into schools. Several participants also spoke about assistance available in the child's early years being withdrawn once the child enters school.⁸³⁸

In the Hume Region, the ECIS has employed a part-time occupational therapist to work specifically with Indigenous families, the first being to support their access to ECIS and then to assist families and teachers in the first term of Prep. This is a flexible model where a therapist meets the family wherever they feel most comfortable and works informally 'in any way we can to give that child a boost in school'. However, as support is only provided until the end of the first term of Prep, the value of this approach is largely dependent on the school following through on the relationship of trust that has been built up by the therapists.⁸³⁹

One parent also suggested there was a common misconception that if early intervention is provided prior to school or in the Prep, then ongoing support is not needed. In reality, support generally needs to continue right through the school years to ensure the student's education remains on track and their needs continue to be met.⁸⁴⁰

838 HASD 1.

839 The *Sharing our Journey Protocol* describes the process for transition from kindergarten to school for children with disability who are receiving a Kindergarten Inclusion Support funding package. According to the protocol, the process should begin in terms two or three of kindergarten when the parent enrolls the child at school and the school begins gathering information to assist the child. In term three or four of kindergarten, the Kindergarten teacher should convene a support group meeting to develop a transition plan with the school and ECIS. In term one, the school should organise a student support group meeting with ECIS. Following the meeting, formal involvement of ECIS ceases, unless some continued short-term involvement is negotiated with the school. See State of Victoria, Department of Education and Early Childhood Development, *Sharing our journey: protocol for enhanced transition from Kindergarten to School for children receiving Kindergarten Inclusion Support funding packages* (3 May 2012) <www.eduweb.vic.gov.au/edulibrary/public/earlychildhood/healthwellbeing/sharingourjourneyprotocol.pdf> at 20 August 2012.

840 Parent survey participant.

835 HASD 4.

836 HASD 11.

837 HASD 11.

Transition to high school

It is well understood that the transition from primary school to secondary school is a critical point in a child's personal and education development. This transition was often mentioned by parents and educators as a strong determinant of how well students with disabilities fare in the rest of their education and into adulthood.

However, people also told us that funding eligibility reviews under the Program for Students with Disabilities (PSD) at this transition point can lead to supports being stepped down or, in some cases, withdrawn once a student enters high school. This is consistent with the findings of the Victorian Auditor-General who reported that in 2010 of 1,592 Year 6 students who had their PSD reviewed, 15 per cent had their funding withdrawn. For those that remained eligible 'the Year 6-7 review often resulted in a decrease in funding, as was the case of 31 per cent of students' in that year.⁸⁴¹

She was allocated level three [funding] in primary school, and because she and the school have worked so hard to progress, her level of support was dropped going into secondary school, where she needs to actively learn the voices of 14 new staff, many new students, new terminology and [so] where the curriculum steps up, her supports are dropped.⁸⁴²

The transition into high school was not an easy one ... it is common 'word on the street' that as a child transitions to high school their funding level will be dramatically cut. In our case it was cut from level 4 to level 2. I'll give you a tip ... Down syndrome doesn't go away when your child turns 12, and if anything, their needs increase, as does the learning gap.⁸⁴³

Parents and educators also commented on other premature withdrawal of support:

If they are improving, I find that their hours of help are taken away. It is because they are getting the help that they are improving. Take it away and you are back to square one.⁸⁴⁴

As your child improves you are entitled to less, but your child improves because of the extra support they receive.⁸⁴⁵

It's ridiculous to withdraw something because it's working ... and it's much harder to help when they're older if they regress.⁸⁴⁶

Leaving school

A number of participants highlighted the difficulties that many students with disabilities face when they make the transition out of school and into work. Educators participating in 'have a say' days spoke about work and training opportunities for students with disabilities and the barriers these students face when they leave school:

They have to do a work placement and it's hard to find someone in the community who will accept them.⁸⁴⁷

Terrible things are happening to students when they go into the workplace because employers just don't understand disability – both students and employers are not well prepared.⁸⁴⁸

There is not enough preparation given to them for their future life in the community.⁸⁴⁹

The Commission notes the work being done by the Department of Human Services through the Futures for Young Adults Program. This program provides support to students with a disability to make the transition to post-school options. It is available to eligible students from when they complete their schooling until they turn 21.⁸⁵⁰ To be eligible, the student must be currently receiving PSD funding or an equivalent in a Catholic or Independent school.

While not all students will be eligible for this assistance, it is a structured program that supports students into employment, training and education options. However, to maximise this opportunity, the student needs a firm foundation based on the best possible education they can receive.

845 HASD 4.

846 HASD 6.

847 HASD 3.

848 HASD 3.

849 Educator survey participant.

850 This program also includes the Transition to Employment (TTE). 'This is an initiative that aims to enhance opportunities for young people interested in pursuing further education, training and employment. It builds a young person's work skills, experience and capacity towards pursuing a work pathway.' See <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/forms-and-templates/futures-for-young-adults-transition-to-employment-registration>> at 2 July 2012.

841 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 17.

842 Parent survey participant.

843 Parent survey participant.

844 Educator survey participant.

Unfortunately, a number of parents in our research felt this was not being delivered. Their fundamental concern was how well equipped their child was to function later in life due to what they consider to be the failure of the system to adequately address their child's learning and developmental needs. These responses were particularly strong among parents of students with autism spectrum disorder and a number of parents of students with dyslexia. These parents stressed that providing support for students with disabilities, particularly at critical stages of transition, is crucial to provide children with better outcomes later in life.⁸⁵¹

As one educator responding to the survey suggested:

If nothing is done to increase funding to provide intervention programs and more intensive support for these students we are going to see a whole raft or subculture of young people who the system has failed and who have reduced chance of success in their adult lives.⁸⁵²

The long-term consequences of failing to provide students with disabilities the support they need were also highlighted in submissions from organisations. According to one submission, the immediate and long-term consequences of failing to address the needs of students with disabilities include:

- students leaving school without functional literacy and numeracy
- mental health problems, including clinical depression and suicidal ideation due to bullying and poor self-esteem due to lack of progress
- families of students with disabilities also developing serious health and stress-related problems.⁸⁵³

Opportunities for improvement

Educators made a number of recommendations to support students with disabilities at critical transition points, including empowering primary school special needs coordinators to pass on records to secondary schools and establishing liaison processes between secondary schools and feeder schools.⁸⁵⁴

Parents also provided a number of specific suggestions so that transitions could be better managed:

A year prior to the student making the transition, parents, primary school and secondary school administrators need to sit and work collaboratively on information exchange that is positive, strength-based and not dictated by what funding level the student was on, or what IQ the student has.⁸⁵⁵

Funding for transition visits to high school as some schools demand an aide accompany you and you may need a series of visits for a gradual transition.⁸⁵⁶

Individual learning plans to be compulsory and handed over from primary to secondary schools through a dedicated process with verification that this has occurred.⁸⁵⁷

A longer supported transition from specialist schools to mainstream.⁸⁵⁸

Special education services within mainstream schools to make it easier to transition between specialist and mainstream environments.⁸⁵⁹

Support for a student with ASD to be carried across from primary school into at least their first year of secondary school before a review is done. Transferring from one environment to another is the hardest thing for these students.⁸⁶⁰

854 Phone-in 8.

855 Case study 11.

856 Case study 11.

857 Parent survey participant.

858 'He was only provided with four hours of supported transition after being at (a special school) for four years.' Parent survey participant.

859 Parent survey participant. Note that these may be available in some schools through satellite units.

860 Parent survey participant.

851 See e.g. HASD 1.

852 Educator survey participant.

853 Submission 2, Julie Phillips, Disability Advocate 2.

One parent described their desire for a flexible system that would allow movement between special and mainstream education:

My ideal schooling system would allow students to move easily between mainstream and specialist schools with tailored programs suited to each child. There are some great programs available but these vary greatly according to geographic region ...⁸⁶¹The Commission notes that DEECD, in partnership with Monash University, has developed a detailed training program and manual entitled *Autism Spectrum Disorders: Planning a successful transition to secondary school*.⁸⁶² This resource includes templates that educators can use with students and parents to help plan a transition. It also contains learning materials and slides that can be used to present a half-day training workshop in schools.

The Commission also notes that the Catholic Education Commission Victoria (CECV) has included transitions between stages of school and post-school as a priority in its implementation plan for the *More Support for Students with Disabilities* initiative. CECV also intends to develop best practice guidelines for primary to secondary transition for students, with a 'particular focus on individual learning plans, student health support plans, complex care needs and behavioural support plans'.⁸⁶³ In addition, it intends to conduct an audit of existing successful practice and a review of post-school options for students with disabilities, building on an existing transition framework.⁸⁶⁴ CECV estimates that by December 2013, an additional 300 students will be supported in transitions under this initiative.⁸⁶⁵

Recommendations

33. Building upon existing guidance, the capacity of individual learning plans to improve transitions is enhanced through dedicated professional development opportunities and through the auditing of individual learning plans as identified at recommendation 16.
34. The Early Childhood Intervention Service provide an enhanced navigation and advocacy role for students with disability seeking to enrol at their first school, and that in order to ensure effective transition the ECIS support children with disability for the first year of schooling.
35. Existing programs to support effective transition from primary to secondary school, and post-school options be enhanced, including allowance for longer periods for transition support for students with disabilities.
36. The Department of Education and Early Childhood Development investigate if any systemic patterns of reductions in funding under Program for Students with Disabilities are occurring for students transitioning from primary to secondary school, publicly report on these findings and take action to prevent unreasonable reductions in funding.

861 Case study 1.

862 State of Victoria, Department of Education and Early Childhood Development, *Autism Spectrum Disorders: Planning a successful transition to secondary school-Autism-friendly learning* (2011).

863 Catholic Education Commission Victoria and Commonwealth, above n 17, 14.

864 Ibid 17–19.

865 Ibid 19.

Chapter 13: Complaints

Main findings

- The Department of Education and Early Childhood Development (DEECD) does not systematically monitor complaints made to schools at a regional or central level. As such, there is no available data on how many complaints are made, what they are about or how they have been resolved.
- There is dissatisfaction among parents of children with disabilities about the current complaints process. Many do not think it makes any difference, and that legitimate concerns are ignored. Others are fearful of repercussions for themselves or their child if they do complain.
- The current complaints process lacks independence as it allows the respondent to the complaint – the school – to be the primary decision maker about whether a complaint is substantiated.
- While each school must have a complaints policy, there is no single, consistent policy for handling complaints across schools in Victoria and no clear systems in place to monitor the fairness and accountability of complaints processes at a school level.
- Those responsible for considering complaints in schools do not have specific training or skills in alternative dispute resolution. This increases the risk of complaints escalating.

The DEECD complaints policy

DEECD publishes information on its website regarding its complaints process, including a Parent Information Sheet.⁸⁶⁶ Further detail is contained in *Addressing parents' concerns and complaints effectively* (the complaints policy).⁸⁶⁷ This policy was developed in response to a 2005 review by the Ombudsman Victoria which recommended that DEECD 'review its guidelines for managing complaints in schools and regional officers to ensure a balance between the rights of complainants and officers'.⁸⁶⁸

The complaints policy requires each school to develop a policy and procedures to address concerns and complaints of parents and students. This means that each government school has its own complaints policy and procedure.

The DEECD policy also outlines how complaints should be monitored. It provides a summary of the role and responsibilities of the school in relation to publicising the complaints policy, maintaining confidentiality, following principles of natural justice and reviewing the policy on a regular basis. It also requires regional offices to have a complaints policy and procedure in place.⁸⁶⁹

The complaints policy sets out the relevant legal framework, including the *Education and Training Reform Act 2006* and the *Charter of Human Rights and Responsibilities Act 2006*. However, it does not mention the *Equal Opportunity Act 2010*, the federal *Disability Discrimination Act 1992* or the *Disability Standards for Education 2005*.⁸⁷⁰ It details the type of concerns or complaints covered, as well as those that it does not cover. These include matters where there are existing legislated rights of review or appeal, including discrimination complaints to the Commission, or specific actions by a school, including expulsion of a student.⁸⁷¹

In addition, the complaints policy is accompanied by guides for principals and staff on a range of issues, such as building positive relationships; dealing effectively with complaints; good listening skills; understanding the blame cycle; managing a request for an apology; moving beyond stalemate; encouraging fair play in negotiations; managing aggression and unreasonable conduct; and managing anger and confrontation.

866 <<http://www.education.vic.gov.au/about/contact/pcmoreinformation.htm#H2N10160>> at 3 July 2012. The Commission notes and welcomes that this information is available in a number of community languages; however, it is not available in alternative formats so as to be accessible for parents and students with a vision impairment, Auslan video or in easy English formats.

867 <<http://www.education.vic.gov.au/about/contact/pcschools.htm>> at 3 July 2012.

868 State of Victoria, Department of Education and Early Childhood Development, *Addressing parents' concerns and complaints effectively* (2009) 2. <www.education.vic.gov.au/about/contact/pcschools.htmwww.eduweb.vic.gov.au/policy_and_guides_Addressings_parents_concerns.pdf> at 31 July 2012. DEECD has advised that it is currently undergoing considerable organisational change and that the current parent complaint policy has been identified as likely to be reviewed. Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

869 Ibid 7.

870 Ibid 3.

871 Ibid 7.

Complaints handling in Catholic and Independent schools

All schools must have a complaints policy in order to be eligible for registration in Victoria.⁸⁷² As Independent schools are individual entities, they each have their own policies and handle complaints within the school.

Catholic schools also handle complaints internally. If a parent contacts the Catholic Education Office in their diocese, they will refer the matter back to the school and assist with enabling communication between the school and parent to resolve the complaint.⁸⁷³

Complaints handling in government schools

The DEECD policy is based on the rationale that 'complaints are most effectively addressed where the issues have occurred, at the local level. The premise is that schools are best placed to resolve parent concerns and complaints that relate to them'.⁸⁷⁴

The Parent Information Sheet on the DEECD website states:

When making a complaint, your child's school should always be your first point of contact; concerns are best resolved at school; the Department expects that most complaints will be resolved by the school.⁸⁷⁵

If a parent takes a complaint directly to the DEECD regional office, it will generally be referred back to the school. If a school cannot resolve a complaint, or considers the complaint to be complex, it may seek the assistance of the DEECD regional office. Complex complaints may include those where the complaint is about the school principal.⁸⁷⁶

If the complaint is not resolved to the parent's satisfaction, he or she may take it to the DEECD regional office where, '[de]pending on the nature and complexity of the concern or complaint, the regional director may involve the assistant regional director, the community liaison officer or other officers in the resolution of the issue'.⁸⁷⁷

If the complaint still cannot be resolved, the parent may refer the complaint to the DEECD deputy secretary.⁸⁷⁸ The parent will be asked to state in writing why he or she considers that the complaint was not resolved and to outline a realistic course of action to resolve the complaint.

Where a complaint relates directly to a student's disability then relevant expertise will be sought within DEECD, usually from the Student Wellbeing and Engagement Division, to assist in the discussions. External specialist information will also be sought if appropriate.⁸⁷⁹

If the complaint raises complex issues, the deputy secretary may refer the matter for independent review by an external agency.

If the complaint remains unresolved after all these processes have been implemented, the deputy secretary may refer the complainant to an external agency, such as Ombudsman Victoria, for investigation.⁸⁸⁰

872 All schools must be registered by the Victorian Registration and Qualifications Authority. The registration standards are described in Part 5 and Schedules 2–5 and 7 of the Education and Training Reform Regulations 2007 (Vic). These standards include that a school has policies and procedures for managing complaints or grievances. See Victorian Registration and Qualifications Authority, *Minimum standards and other requirements for school registration*. <www.vrqa.vic.gov.au/registration/schools/default.htm> at 26 July 2012.

873 Key Informant Interview, Catholic Education Office Melbourne. 4 June 2012.

874 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

875 <<http://www.education.vic.gov.au/about/contact/pcmoreinformation.htm#H2N10160>> at 3 July 2012.

876 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 7.

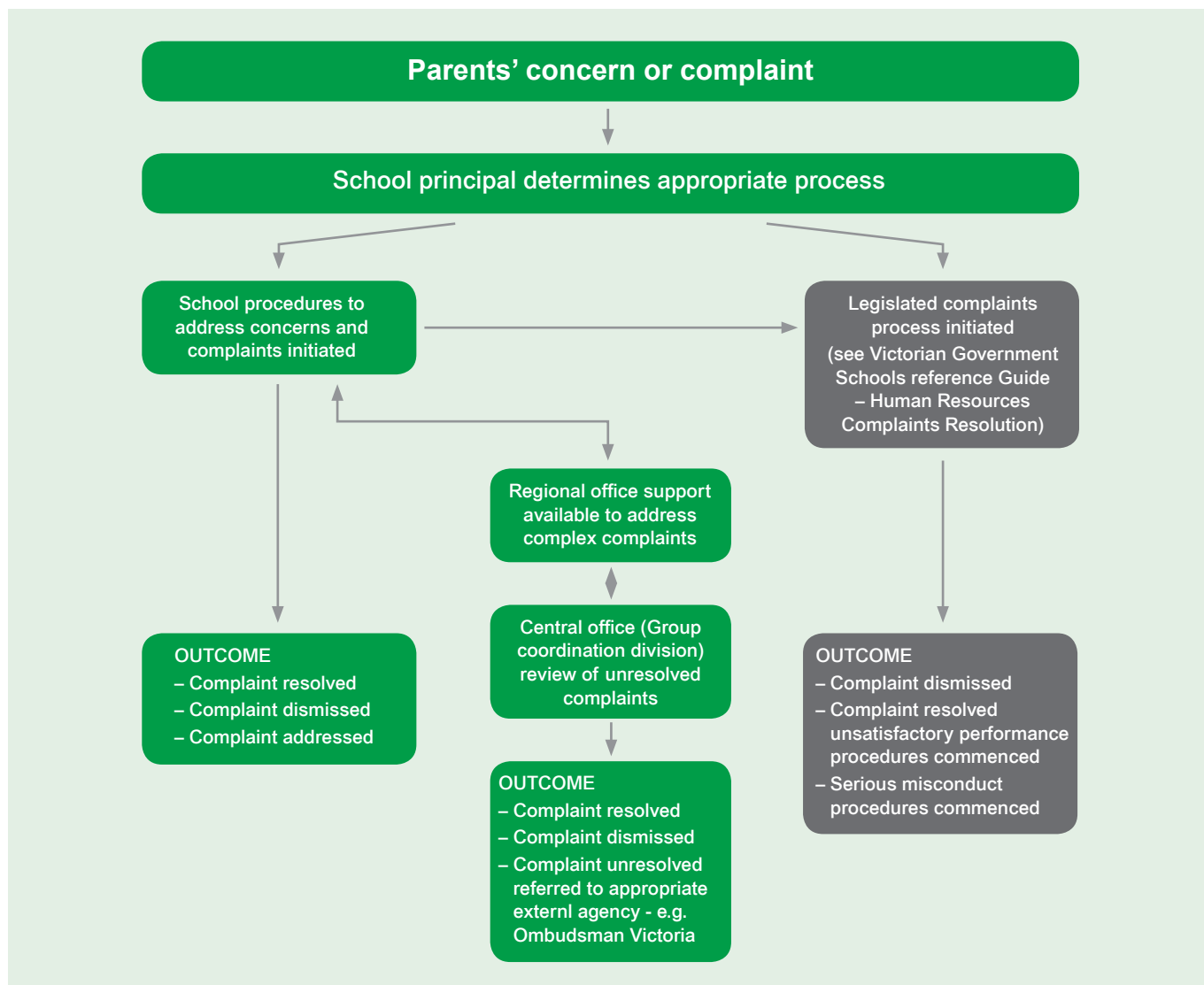
877 Ibid.

878 If a complaint has not already been raised with the school or regional office prior to its receipt by the deputy secretary, it will be referred back to the relevant regional office for investigation and resolution.

879 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

880 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 8.

Figure 7: Concerns and complaints management process ⁸⁸¹



Experiences of the complaints system

I always feel that you have to tread very carefully to not get the school offside as communicating effectively with them is fraught enough without making things official.⁸⁸²

Parents should not have to fight for what their child is entitled to.⁸⁸³

Parents who had reported discrimination in our survey were asked if they had made a complaint. Most parents – around two in three – who said that their child had experienced discrimination, had also made a complaint.⁸⁸⁴

Most parents took their complaint to the school principal and/or a teacher or staff member.⁸⁸⁵ This is consistent with the DEECD complaints policy; however, this preference to raise the matter directly with the school was generally shared by all parents regardless of school sector.⁸⁸⁶

881 Ibid 5.

882 Parent of student attending a government mainstream school. Parent survey participant.

883 Parent of student attending a Catholic mainstream school. Parent survey participant.

884 326 parents (56 per cent) reported that their child had been discriminated against at school. Parent survey Q 51. Of these 216 parents (66.2 per cent) had made a complaint. Parent survey Q 52.

885 168 parents complained to the school principal. 140 parents complained to school staff.

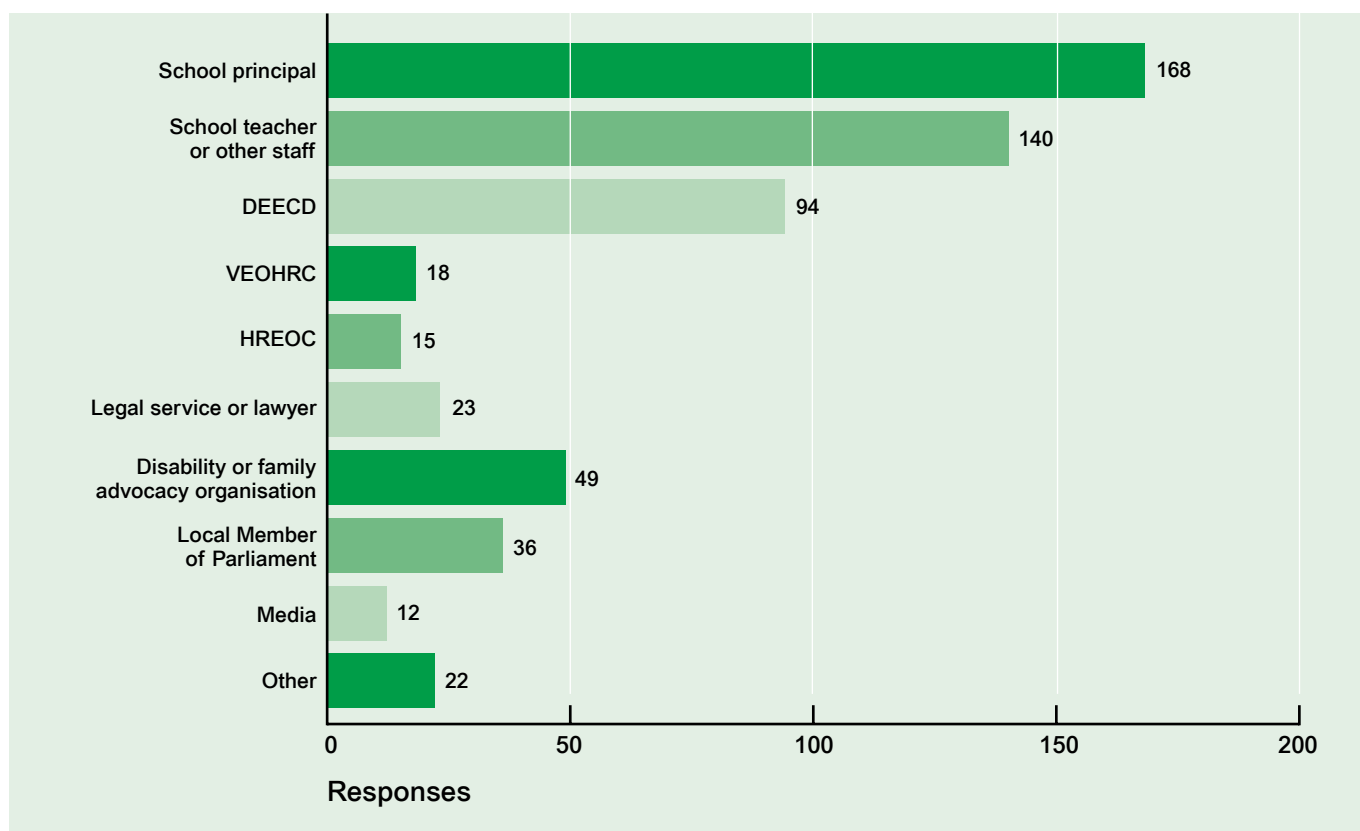
886 See <<http://www.education.vic.gov.au/about/contact/pcschools.htm>> at 3 July 2012.

A significant number of parents had also made a complaint to the DEECD regional or central office.⁸⁸⁷ However, very few had made a complaint to the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission.⁸⁸⁸

Some said they had reported their concerns to their local Member of Parliament or the media, while others had sought assistance from advocacy groups or lawyers to address their concerns.

The Commission also notes that parents may seek assistance from bodies that do not have formal oversight of schools. For example, since its establishment in 2007, the Disability Services Commissioner has received 'over 60 enquiries and complaints about issues of concern that parents of children with disabilities have with the DEECD and their child's school, focusing on disability issues. These enquiries are not within the jurisdiction of the Disability Services Commissioner. Advice from the Association for Children with a Disability confirms that over 38 per cent of calls to the Parent Support Line in 2010 concerned education related services'.⁸⁸⁹

Figure 8: Bodies to which parents make complaints about disability discrimination in schools



⁸⁸⁷ Ninety-four respondents.

⁸⁸⁸ Eighteen respondents had complained to the Victorian Equal Opportunity and Human Rights Commission. Fifteen had complained to the Australian Human Rights Commission.

⁸⁸⁹ Submission 1, Disability Services Board 3.

Feedback from parents on how complaints are handled

A number of parents told the Commission that they were happy with the school's response to their complaint:

The school took on board our genuine complaint and addressed it, apologising and putting in place strategies to prevent future issues occurring.⁸⁹⁰

[The school] used to use [the] disability toilet as a storeroom – [I] felt that was disrespectful ... when [I] raised that, [it] was heard and [the] problem [was] fixed.⁸⁹¹

We complained to the vice principal who provided the teacher with training and support. When this did not work, she has worked closely with us to try to ensure successful outcomes for our child.⁸⁹²

Other parents also reported having successful results after approaching DEECD:

Action only occurred when a complaint was lodged with the Department of Education and Early Childhood Development. We now have an ILP in place although regular reviews are still difficult to get. I am continuing to work with the Department to address my concerns. The Department have been very supportive and assisted me greatly in working with the school.⁸⁹³

[The] Department of Education was helpful and gave me methods of contacting them if it happened again.⁸⁹⁴

However, a number of parents expressed concern about the effort and resources it took to be successful advocates for their children:

I can say I am satisfied with the outcome [of our complaint] but it was only achieved because I had legal representation from a barrister and top-tier solicitors' firm. I don't believe I could have ever got the case to the point that I did without their support.⁸⁹⁵

Changes were made following request from parents. School did not adequately know how to deal with it and relied on parents for strategies. Fortunately strategies are working, however, parents must regularly (daily) monitor that all is going okay. Parents also have formal meetings with school (monthly) to assess effectiveness and raise new issues. Seems to be no acceptance from school or teacher that they were at fault, nor any proactive work to remedy in the future. Rather that they will do something about it because the parent's complained. Seems that each parent(s) that experience similar have to 'reinvent the wheel' with the school.⁸⁹⁶

A number of parents said they were unhappy with the complaints process or felt that it had not achieved anything for their child.⁸⁹⁷ Some reported that their complaints or suggestions had been ignored:

Made a complaint with school. They ignored it. Informed regional office, no response, no receipt, nothing ... Apparently there was an internal department review ... They eventually said that after an internal investigation there was no case to answer. They didn't speak to anyone involved. There was no detail. No reasons provided. They say complaints are receiving attention – say they take it seriously. But they don't do anything.⁸⁹⁸

The Department of Ed need to be held accountable. No one would return my calls or my emails.⁸⁹⁹

[The Department] passes [complaints] back down to the school really quickly. So there is no coaching from DEECD, no monitoring of what the schools are doing.⁹⁰⁰

One parent made a suggestion for other parents considering making a complaint:

Parents should always take an advocate if they can. The school was not really happy with me having an advocate. The Principal never spoke negatively in front of the advocate.⁹⁰¹

890 Parent of student attending an Independent school. Parent survey participant.

891 Phone-in 7.

892 Parent of student attending a government mainstream school. Parent survey participant.

893 Parent of student attending a government mainstream school. Parent survey participant.

894 Parent of student attending a government specialist school. Parent survey participant.

895 Case study 8.

896 Parent survey participant.

897 In addition, one advocate reported that when parents requested an independent investigation of a complaint that the regional office of the DEECD is likely to arrange for ex-principals to carry out these investigations. This advocate was concerned that this may lead to a skewing towards favourable findings for the school. Information provided to the Commission by Julie Phillips, Disability Advocate 13 July 2012.

898 Phone-in 4.

899 Phone-in 33.

900 Case study 36.

901 HASD 4.

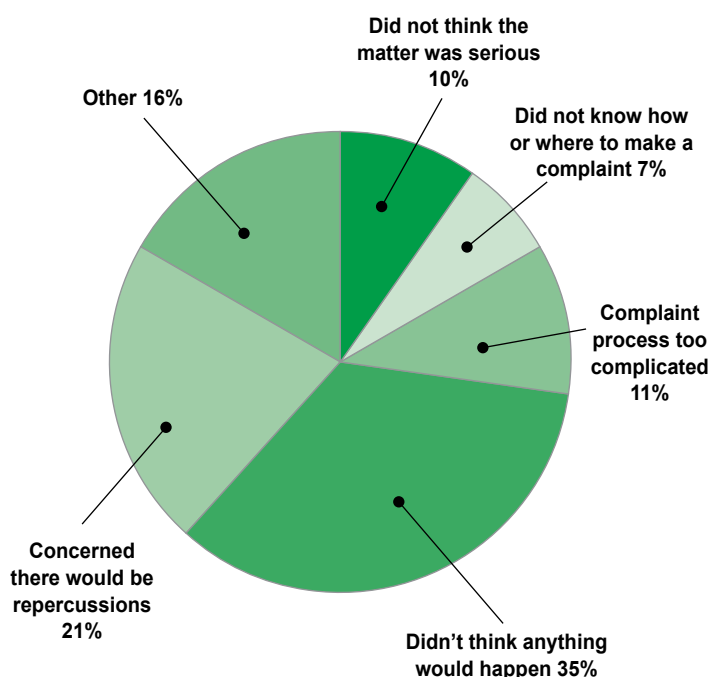
The Disability Discrimination Legal Service put forward a view that complaints and litigation rarely lead to systemic change as 'the [State of Victoria] vehemently defends itself against all complaints instead of looking to the cause of such complaints and attempting to address this'.⁹⁰²

Reasons for not making a complaint

The *Review of Disability Standards for Education 2005* found that nationally 'The complaints process is complex and parents, associated and students are reluctant to make a complaint... There are few consequences for education providers that breach the Standards or fail to act on complaints... The lack of accountability for compliance with the Standards is a significant impediment to their overall effectiveness'.⁹⁰³

As part of our research we asked parents who did not complain why they chose not to do so. One in three said the reason they did not complain was that they did not think anything would happen. One in five parents were concerned there would be repercussions if they complained.⁹⁰⁴

Figure 9: Reasons for not making a complaint



⁹⁰² Submission 7, Disability Discrimination Legal Service 30.

⁹⁰³ Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, viii.

⁹⁰⁴ 34 per cent and 21 per cent respectively.

Some parents commented:

We were concerned going to the Department as previous disability student parent had no luck from our school. Also did not want to affect our child's funding for future years by rocking the boat!⁹⁰⁵

I had not complained as I did not want it to impact my son in a negative way so early [into] his education starting.⁹⁰⁶

Repercussions were my greatest concern. Any issue my child has raised I have addressed with the school. But, I have observed teachers rolling their eyes and being dismissive of his input, and not showing the appropriate respect ... I wonder how much this impacts his learning, when he doesn't feel heard or worthy of their attention.⁹⁰⁷

The culturally and linguistically diverse (CALD) critical friends group noted that language difficulties can be an additional barrier to making complaints for some parents. A lack of knowledge about the complaints process and issues of cultural safety were also raised by the Victorian Aboriginal Disability Network.⁹⁰⁸

Parents are not aware of how or where to complain, and the process is not easy. How do you complain if you do not know what to expect from schools?⁹⁰⁹

Another parent said that they were actively discouraged from making a complaint:

I was told by the Education Dept not to put a formal complaint in as it would affect my relationship with the school and my son would be disadvantaged.⁹¹⁰

⁹⁰⁵ Parent of student attending a government mainstream school. Parent survey participant.

⁹⁰⁶ Parent of student attending a Catholic school. Parent survey participant.

⁹⁰⁷ Parent of student attending a government mainstream school. Parent survey participant.

⁹⁰⁸ Victorian Aboriginal Disability Network critical friends group.

⁹⁰⁹ CALD critical friends group.

⁹¹⁰ Parent survey participant.

Relationships with the school after making a complaint

DEECD advised the Commission it does 'not tolerate victimisation and require schools to take reasonable precautions to prevent victimisation from happening'.⁹¹¹ Nevertheless, in our study, a small number of parents related experiences of negative treatment after making a complaint:

Eventually someone at Department of Education called the school and told them they were not allowed to kick him out. The principal called me at home in a fury. His teacher did not talk to me for virtually the whole of last term we spent there as she was so angry for the lack of support I had shown the school – they felt I had doxxed them in and done the wrong thing by standing up for my son's rights. We eventually left as the pressure was too much on both my son and I.⁹¹²

The Principal dragged me into his office (I work at the school) and ripped my head off for going to the Department.⁹¹³

... as an exhausted parent if you complain it only leads to suspensions or more seclusions and if you have little respite and other children it is a sacrifice you make. You don't make too much fuss because you are petrified you child will be expelled and then you can't cope.⁹¹⁴

The school were angry that we should think about raising any issues. They have been consistent in this response with everything. Sport has kept my son hooked in to school and rather than use this to engage him they appear to have deliberately excluded him from almost every opportunity he has shown an interest in. This has been devastating at times and it appears to have occurred immediately following our complaint about discrimination. He felt victimised as a result.⁹¹⁵

One kind of negative treatment, and a barrier to making complaints, is a perception held by some parents that schools 'label' parents who complain:

I feel that I can't speak up about [exclusion from excursions and camps] because I am seen as a trouble maker by the school.⁹¹⁶

Sometimes you feel as if you are the whingeing mum ... Parents should not have to advocate as much as they do.⁹¹⁷

Some parents said they no longer have the energy to make complaints. Many years of pushing for change can leave parents feeling frustrated and exhausted:

We have made numerous complaints to the Regional Office and are worn out by the process.⁹¹⁸

I know I could make a complaint but I am a mother of three disabled children and I don't have the time to go through that. The only solution I can see if there is a class action.⁹¹⁹

My daughter is 17. I have been fighting a long time. It has been the same problems for many years. I have used advocacy, I have told my story many times. I have brought discrimination claims and complaints. This has consumed a lot of time and energy but things have not changed. Nothing has changed in 12 years – maybe it is even a bit worse.⁹²⁰

The Disability Discrimination Legal Service expressed their view that DEECD has treated parents badly in the course of litigation:

Parents are alienated, maligned and singled out in the DEECD's determination to portray parents of children with disabilities as bullies and haranguers ... Doctors, psychologists, psychiatrists, speech pathologists who dare to volunteer themselves as expert witnesses for their patients in legal cases find themselves to also be targets of discredit.⁹²¹

911 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.
See also Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 3, 11–12, 26–29.

912 Parent survey participant.

913 Parent of student attending a government mainstream school. Parent survey participant.

914 Parent of student attending a government mainstream school. Parent survey participant.

915 Parent of student attending an Independent school. Parent survey participant.

916 Phone-in 28.

917 HASD 4.

918 Case study 38.

919 Phone-in 32.

920 HASD 1.

921 Submission 9, Disability Discrimination Legal Service, 39.

Opportunities for improvement

Suggestions were made for improving responses to discrimination generally, and to the complaints process more specifically.

Meeting the information needs of parents

One parent wanted clearer information about her child's rights at school:

I would like to be able to get the answers I need about my rights for my child at school easily, so I can give the school the right information, and it would cause a lot less stress.⁹²²

The Disability Services Board suggested that the department consider:

A separate brochure for the parents of children with disabilities, outlining the various options available to them to make a complaint or raise a concern.⁹²³

In particular, they observed that the current Parent Complaints Information Brochure does not address the rights contained in the Education Standards, and does not advise parents of their avenues for review or appeal of decisions.⁹²⁴ The Commission agrees that these limitations should be addressed.

The Commission notes that since the department's policy has come into effect, brochures explaining the process have been provided to parents of each Prep student at the commencement of the school year, in Prep information bags distributed by the department.⁹²⁵ This is a welcome initiative that arguably could be extended to entry into Year 7 of high school when parents and students are likely to be dealing with a new school.

We also note that schools are required to include a questions on 'I know how to make a complaint' and 'this school takes parent's concerns seriously' in the annual parent opinion survey that all government schools are required to run.⁹²⁶ This is also welcome. However, it could be supplemented with a more explicit question about the level of confidence parents have in the complaints system at the school.

The Commission also notes and welcomes that the Parent Information Sheet is available in a number of community languages. However, it is not available in alternative formats so as to be accessible for parents and students with a vision impairment, Auslan video or in easy English formats.⁹²⁷ Again, these are simple actions that could improve parent and student awareness of the complaints process.

The Commission also welcomes the work DEECD is currently undertaking in partnership with the Association for Children with a Disability to develop resources for parents and teachers to assist them to resolve issues in a positive manner.

Capacity building for key personnel

The *Addressing parents' concerns and complaints effectively* policy requires schools to 'provide staff with (or provide access to) training and support appropriate to the responsibilities under the complaints handling procedures'.⁹²⁸ We also note that DEECD offers biannual training sessions to central office and regional staff who deal with complaints.⁹²⁹

This is welcome. However, we consider that this effort could be bolstered by extending the range of training offered to schools to include support around techniques that might assist them to deliver better results when managing complaints. The Commission would welcome the opportunity to work with the department to facilitate this.

The Commission also notes the international experience of utilising alternative dispute resolution techniques in complaint handling and building relationships between parents with children with disabilities and schools. This indicates that positively involving parents in their child's education not only reduces complaints, but also delivers improved educational outcomes.⁹³⁰

927 The Commission also notes that the complaints form available on the DEECD website is not currently available in alternative formats. It is not compulsory to use this form to lodge a complaint.

928 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 21.

929 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

930 Key informant interview, Disability Services Commissioner. See e.g. National Center on Dispute Resolution in Special Education. <www.directionservice.org/cadre/cadreconf2011resources.cfm> at 26 July 2012.

922 Parent survey participant.

923 Submission 1, Disability Services Board, 7.

924 Submission 1, Disability Services Board 7.

925 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

926 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 11.

Building in some independence

Currently most complaints are dealt with directly by the school; however, complaints about a principal must be dealt with by the regional office of DEECD. This reflects the policy preference for issues being resolved at the local level and the relationship between schools and the department being one of 'professional trust'. While there is much to commend a localised approach to complaint handling it does create a situation where the legal entity considering the merit of the complaint (the school), is the same organisation against whom the complaint has been made.

One way to resolve this issue would be for schools to establish a panel of people to deal with complaints. This would include the principal and other appropriate school staff, but could also include an independent person from the community. This would be a simple way to ensure a higher level of independence in considering complaints and need not be onerous for the school, who would already have strong relationships with leaders in the community, beyond the membership of the school council.

Systemic reforms

Several participants put forward ideas for changing the structures that relate to complaints handling and compliance. For example, one parent argued the need to reform disability discrimination legislation:

An overhaul of the DDA [*Disability Discrimination Act 1992*] is needed. People should have to make sure certain things happen, rather than allowing things to get to the complaint stage. DDA should ensure that access happens and if it does not, penalties will apply. It should not be the responsibility of those with disability to make a complaint because many don't have the strength, ability or courage to do this – it is very stressful going through complaint process.⁹³¹

Another parent suggested that schools should be audited for compliance:

I think at the least someone should be appointed to do some kind of audit – someone who goes into a school and looks at whether they are meeting the requirements outlined in Department policy. Right now it's just individual parents wondering if they are going crazy, being unreasonable, and families enduring ridiculous amounts of stress.⁹³²

931 HASD 7.

932 Parent survey participant.

The Disability Services Board suggested 'there may be a benefit in the establishment of an independent complaints process for disability service provision within the Education Department', modelled on the Disability Services Commissioner that includes the requirement of education providers to report complaints and complaint outcomes:⁹³³

The nature of issues raised by parents of students with a disability suggest the merits of having an independent complaints resolution process that focuses on the rights of the student with a disability, the quality and efficacy of supports provided, the nature of communication and ongoing relationships between the family and the school, and opportunities for service improvements.⁹³⁴

The Commission does not consider that an additional complaints handling body is feasible; however, our research suggests that improving the independence of the existing complaints process and encouraging a more conciliatory focus would make the complaints process more robust, transparent and fair. There are a number of changes we would suggest.

Consistency and fairness

It is important to note that each government school currently develops its own complaints policy and, as such, there is no single consistent policy across all schools. DEECD informed the Commission of the rationale for this approach:

Development at the local level increases school community involvement and understanding of the complaints process and the regular review of policy and procedure ensures ongoing knowledge within the community.⁹³⁵

Currently there is no regional or centralised DEECD process for:

- auditing the quality of complaints processes in schools
- ensuring adherence to minimum time frames for handling complaints suggested in the DEECD complaints policy
- monitoring that parents are notified by the school about the manner in which their complaint will be investigated, the outcome of their complaint and when the complaint is finalised.⁹³⁶

933 Submission 1, Disability Services Board – cover letter.

934 Submission 1, Disability Services Board 7.

935 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

936 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

While the Commission appreciates the value of a localised approach to these matters, we are concerned that there may be a lack of consistency in how complaints are managed, especially when accountability is devolved to the body that is the subject of a complaint.

In addition, DEECD notes that schools 'vary in size and configuration ... and while aspects of the policy will remain the same, procedures could differ'.⁹³⁷ For consistency and fairness across all schools, the procedures for handling complaints should not differ from school to school and there should be at least a basic level of monitoring of practices by DEECD to ensure accountability.⁹³⁸

Otherwise it is left to parents to escalate a complaint if procedures have not been correctly followed, thereby shifting the burden of monitoring and accountability onto the complainant and away from the government school system.

Monitoring discrimination complaints specifically

As part of the research, the Commission asked DEECD what process it followed when a complaint alleging discrimination is made. We were informed that:

Where allegations of 'discrimination' are made within a complaint, either directly or indirectly stated, advice is sought from the Department's Conduct and Ethics Unit, regardless of whether the complaint has been made at the local school-based level or by way of the state or federal commission.⁹³⁹

However, when asked how many complaints of alleged discrimination were received by government schools in the previous year, DEECD stated:

The Department has no information on the amount of complaints received by individual schools.

This suggests that not only does DEECD not know how frequently instances of discrimination have been alleged to have occurred within government schools, it also does not know how many complaints have been made on other issues.⁹⁴⁰

Ensuring lessons are learned from complaints

The DEECD complaints policy states that schools 'should' consider recording details of all complaints received. This is not mandatory under the policy. However, each school is required to 'regularly review its record of complaints to identify common or recurring issues that may need to be addressed'.⁹⁴¹ While this is welcome, if schools are not mandated to capture complaints data then it seriously undermines their ability to undertake any meaningful review.

It is also not clear if DEECD, either at a central or regional level, undertakes reviews of aggregate complaints data from schools to identify systemic issues or lessons that can be learned. As DEECD does not know how many complaints are made to schools in any one year, it is unlikely that this aggregate or trends data is captured.

DEECD advised the Commission that '[i]ndividual regional offices make their own arrangements in the monitoring of parent complaints received by them and the identification of any systemic issues. Individual regional directors determine how this is managed'.⁹⁴² The central office of DEECD has a similar process for reviewing complaints made to the deputy secretary.⁹⁴³

This means that regions may undertake systemic reviews of complaints they themselves have received but there is no explicit process for reviewing schools complaints data at a regional or central level. This is despite the fact that the vast majority of complaints are handled solely at the school level. As such, it would seem that most of the data about complaints is not reviewed to identify systemic issues or emerging trends. This is a significant missed opportunity to learn lessons, improve practice and ensure accountability throughout the system.

940 However, the Student Wellbeing and Engagement Division, DEECD informed the Commission that this division has recently introduced a phone call register process to track the nature of complaints and identify trends and actions in the disability area. This is a welcome step. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

941 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 12-15.

942 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

943 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868, 12-13.

937 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

938 The Commission acknowledges that each DEECD region employs a Community Liaison Officer who is available to provide advice to schools in their development of a complaints policy and procedures. Central DEECD staff are also available to provide such advice. Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

939 Information provided to the Commission by Regional Support Group, DEECD, 5 July 2012.

Recommendations

Noting the findings and recommendations of the Report of the Review of Disability Standards for Education 2005, that:

37. In all Victorian schools, parent and student information materials regarding complaints be updated to include a clear statement of rights and obligations under anti-discrimination laws.
38. The Department of Education and Childhood Development include training in alternative dispute resolution for school principals and regional staff who have responsibility for handling complaints, and that Catholic Education Offices and Independent Schools Victoria develop similar training for school principals.
39. All complaints regarding government schools escalated to a regional or head office level be considered by a panel of persons that includes an independent person, and in the case of a student with disability, an independent person with expertise in disability issues.
40. All government school complaints regarding students from vulnerable groups , including Indigenous students with disabilities be referred for expert input and monitoring, for example from the Koori Education Unit in the Department of Education and Early Childhood Development.
41. All government schools be required to submit data on the nature and type of complaints received each year, and that this aggregate data be published on a regional and state-wide basis.

Part 4: Removing barriers in the system – building capacity

Chapter 14: Funding and resources

Main findings

- While over 20,000 students currently receive additional assistance through Program for Students with Disabilities (PSD) funding provided to government schools, feedback from parents and educators reveals considerable concerns about how the program is structured, delivered and held accountable for educational outcomes.
- Parents reported that the application process for PSD funding was expensive, time consuming and stressful, especially its focus on what their child could not do. Many also said that the funding criteria were applied too rigidly and that some forms of disability are not covered under the seven PSD categories.
- Parents and educators indicated that there is less likelihood of adjustments being made to support students with disabilities who do not qualify for PSD funding.
- Parents also raised concerns about the transparency of PSD funding decisions, as well as the process which schools use to determine how this funding will be used. This is a crucial area where schools can improve their communication with parents. They should also seek to engage parents in the decision-making process.

Funding for students with disabilities in Victorian government schools

The Program for Students with Disabilities is a targeted additional program for a defined student population with moderate to severe disabilities. [It] supports the education of students with disabilities in Victorian government schools by providing schools with supplementary resources.⁹⁹⁴

Funding to support the inclusion of students with disabilities differs between Catholic, Independent and government schools. This chapter focuses on the dedicated funding stream available in the government school system, the Program for Students with Disabilities (PSD).

It is important to note that the PSD is not the only source of funding to support the inclusion of students with disabilities in government schools. The global school budget – the student resource package – is expected to be used to support the learning of students with disabilities as part of delivering a universal education service.

⁹⁹⁴ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

In addition, extra workforce resources (including specialist support officers, psychologists, social workers, visiting teachers, and autism coaches) curriculum resources and pedagogy resources, such as the Ability Based Learning Education Support (ABLES) are also available, as well as support for student transport and access to the Statewide Vision Resource. Funding for the Language Support Program is also provided.⁹⁴⁵

The Victorian budget papers indicate that the combined total of these investments in 2011–12 amounted to \$686.1 million.⁹⁴⁶

In addition, new initiatives using funding provided by the Australian Government's *More Support for Students with Disabilities* initiative will roll out in Victoria over the next two years.⁹⁴⁷

The PSD program does, however, represent a significant funding stream, with an annual budget allocation of more than \$500 million per annum.⁹⁴⁸ What makes the PSD distinct from the universal supports funded through each school's general budget is that it provides targeted assistance to support access to education for students with moderate-to-severe disability who meet specific eligibility requirements.

Funding for students with disabilities in the Catholic system

In the Catholic school system, the Catholic Education Commission of Victoria (CECV) is the formal body established to receive Australian Government and Victorian Government grants on behalf of the Bishops of Victoria and all Catholic schools in Victoria.⁹⁴⁹

CECV can distribute an additional quantum of funding to support the education of a student with disability where the school has applied for this additional resource and the student has been determined as eligible for this funding. Around 8200 students are currently supported with this funding in Catholic schools in Victoria.⁹⁵⁰

The eligibility criteria is broadly similar to that for the PSD; however, the amount of funding available for individual students differs.⁹⁵¹

The needs of students are determined annually through an evaluation of the submitted student program. Criteria have been established to create a three tier level of need. The Catholic Education Office Melbourne informed the Commission that schools will often supplement this funding and will pool resources across multiple students if that will provide the best model of disability support.⁹⁵²

Funding for students with disabilities in the Independent sector

In the Independent sector, a small amount of dedicated funding for students with disabilities is available through targeted Australian Government programs. To be eligible for this funding, the student must be assessed as having a disability under one of seven categories of disability and have 'demonstrated education needs'.⁹⁵³

In 2012, the quantum of funding, together with the demand for funding, allows three levels of funding, ranging from approximately \$1,700, \$2,800 and \$3,900 per annum.⁹⁵⁴ Level 4 funding is reserved for students attending one of the 11 Independent specialist schools in the state. This federal funding can be used to provide support teachers, aides, counsellors and resources. It is generally ongoing for four years.⁹⁵⁵

945 The Commission notes that \$30 million was allocated to this program in 2011–12. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 21 November 2011. The Commission further notes that some organisations are critical of this program on the basis that it is an inadequate substitute for PSD funding that was previously available to students with severe language disorders under more generous eligibility criteria. See Submission 7, Disability Discrimination Legal Centre, 18–19.

946 State of Victoria, Department of Treasury and Finance, 2012–13 Budget Paper no. 3 – Service Delivery (2012) 98.

947 Victoria and Commonwealth, above n 23.

948 Total PSD funding has increased from \$359 million in 2006/07 to \$533 million in 2011. Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, ix.

949 The Catholic Education Commission Victoria is made up of members from the four dioceses in Victoria. <www.ceomelb.catholic.edu.au/our-schools/funding-of-catholic-schools> at 4 July 2012.

950 Catholic Education Commission Victoria and Commonwealth, above n 17, 9.

951 The Catholic Education Office Melbourne estimates that around 9,000 students in Catholic schools in Victoria would be eligible for PSD funding if they were in the state sector. Key informant interview, Catholic Education Office Melbourne.

952 Key informant interview, Catholic Education Office Melbourne.

953 The categories are intellectual disability, severe language disorder, severe emotional disorder, autism spectrum disorder, physical disability – chronic health impairment, vision impairment and hearing impairment. Independent Schools Victoria, *Students with Disabilities Handbook* 2013 (2012) 6.

954 Key informant interview, Independent Schools Victoria.

955 Independent Schools Victoria, above n 323, 6–7.

To apply for funding, the school submits an application to Independent Schools Victoria (ISV). ISV engages a panel of experts to assess the applications. If an application requires further consideration, it goes to the ISV Special Education Committee.

The ISV Board finally approves all funding.⁹⁵⁶ An appeal process exists for any application deemed ineligible; however, the appeal must be lodged by the relevant school principal.⁹⁵⁷

Figure 10: Students in the Victorian Independent sector who received funding in 2011 under Australian Government targeted programs for students with disabilities⁹⁵⁸

Disability type	Level 1	Level 2	Level 3	Level 4	Total
Autism spectrum disorder	27	66	35	24	152
Hearing impairment	29	18	33	0	80
Intellectual disability	217	75	64	78	434
Physical disability	69	20	31	2	122
Severe emotional disorder	98	118	108	292	616
Severe language disorder	339	262	62	1	664
Vision impairment	1	3	7	0	11
Total	780	562	340	397	2,079

Other programs to support students with disabilities in Catholic and Independent schools

In Victoria, around \$550 million in recurrent funding for non-government schools through the Non-Government Schools Financial Assistance Model. This funding is untied to enable each non-government school to manage its funds to meet the school's particular educational priorities and student needs.⁹⁵⁹

Independent and Catholic schools may also lodge applications for State Support Services funding. This program, with a budget of around \$6 million per annum, provides funds for visiting teachers and speech therapy and must be applied for each year.⁹⁶⁰ Funding for speech therapy is limited to students in Prep to Year 4 only and is available for a maximum of three years.⁹⁶¹

Some federal funding is also available for physiotherapy and occupational therapy. In 2012, this is capped at \$1,600 per year and must be applied for annually. Up to \$30,000 for capital works and equipment is also available using Australian Government funds. Again, this limit applies within the context of a limited amount of funding.⁹⁶²

956 Key informant interview, Independent Schools Victoria.

957 Independent Schools Victoria, above n 323, 7.

958 Independent Schools Victoria and Commonwealth, above n 18, 2–3.

959 'In 2010-2013 Non-Government Schools Funding Agreement is providing an additional \$63 million on top of existing funding levels to increase support for students with a disability in non-government settings'. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 9 August 2012.

960 Independent Schools Victoria, above n 323, 6.

961 Ibid 19.

962 Key informant interview, Independent Schools Victoria.

Although additional funding is also provided to Catholic and Independent schools through the Australian Government's Literacy, Numeracy and Special Learning Needs Program, this only provides a flat per capita annual amount for every eligible student with disability. In 2011, this amount was \$994.

As the Gonski report notes, these funding arrangements 'have resulted in some students with disabilities in non-government schools receiving substantially less funding than students with the same educational needs in government schools, particularly students with high support costs'.⁹⁶³

The Program for Students with Disabilities (PSD)

The PSD provides additional resources to government schools to support the education of students with disabilities. In 2011, 20,883 students received PSD funding⁹⁶⁴ – around 3.9 per cent of the government school population.⁹⁶⁵

Students approved for PSD funding made up 2.17 per cent of the government mainstream school student population in 2011.⁹⁶⁶ Almost all students attending government specialist schools have PSD funding.⁹⁶⁷

In 2011, 55 per cent of students with PSD funding were educated in mainstream schools. The other 45 per cent were attending specialist schools.⁹⁶⁸

963 Australian Government, 'Final Report of the Review of School Funding' above n 27, 134.

964 Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

965 Ibid. Nationally, in 2010, there were around 172,300 students who met state and territory eligibility criteria for receiving disability funding, representing 4.9 per cent of total student enrolments. There are differing percentages of funded students with disabilities in each state and territory (between 3 and 8 per cent), which is largely due to differing definitions, with some definitions adopted by states and territories broader than others. Survey data shows that 8.8 per cent of people in Australia aged 5 to 14 years had a disability, based on a broader definition of disability (ABS 2010). Most funded students with disabilities attend mainstream schools. It is estimated around 9 per cent of students with disabilities aged 5 to 14 years attend special schools (AIHW 2006). Cited in Australian Government, 'Final Report of the Review of School Funding' above n 27.

966 That is 11,525 students out of 530,821 students in all government mainstream schools. Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

967 9385 out of 9989 students in government specialist schools. Ibid.

968 Information provided by Student Wellbeing and Engagement Division, DEECD, 19 June 2012.

Program objectives

DEECD guidelines state that the objectives of the PSD program are:

Student learning – Student potential for growth and development in (academic) discipline-based, personal and interpersonal learning, and independence in learning is maximised and is consistent with their goals and aspirations.

Student engagement and wellbeing – Students are motivated and are able to participate fully in their education and wider school life, consistent with optimal and relevant goals and aspirations.

Student pathways and transitions – Students successfully transition to, throughout and from school, and the pathways selected maximise their potential for growth and development while they attend school and after they leave school.⁹⁶⁹

The application process

There are three types of applications for PSD funding: new applications, Year 6–7 reviews, when the student is transitioning to secondary school; and reappraisals. The Year 6–7 review is mandatory for all students in receipt of Level 1–4 funding. Reappraisals can be submitted when the level of support needed for the student changes.

Applications are dealt with through an annual round.⁹⁷⁰ The application is submitted by the principal of the school, following preparation by the student support group (SSG).⁹⁷¹ It must also be accompanied by documentation required by DEECD to prove eligibility.⁹⁷²

969 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 1.

970 Applications for funding for the 2013 school year closed on 20 July 2012. Late applications may be accepted in limited circumstances. For example, in cases of a seriously deteriorating medical or behavioural condition. Applications for the Prep year may also be accepted. Ibid 6.

971 The student support group is mandated for all students in the PSD program. It is discussed in more detail in Chapter 8.

972 For example, to prove eligibility on the basis of autism spectrum disorder a signed report from a psychologist and a signed report from a speech pathologist containing a current comprehensive speech pathology assessment (not more than one year old) is required. Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 10.

Timeframes for dealing with applications are set out in the *Program for Students with Disabilities Guidelines*. If an application is not successful, the principal is notified and he or she is then responsible for informing the parents of the student, contacting the regional DEECD disabilities coordinator for feedback on why the application did not meet the criteria for eligibility and convening the SSG 'to discuss the needs of the student, and set and prioritise educational goals'.⁹⁷³ The principal may then choose to submit an appeal with DEECD on behalf of the SSG.

Figure 11: The PSD application process⁹⁷⁴

Summary of the Program for Students with Disabilities application process

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
Student enrolls Printed information about school program and PSD provided to parents	Student Support Group (SSG) established Existing documentation examined	Further assessment occurs if necessary (Lewis and Lewis undertakes eligibility assessment for ID and SLD categories)	SSG meets to check eligibility criteria SSG completes Educational Needs Questionnaire (ENQ) Documentation supporting eligibility and ENQ indicators collated	Application submitted online and in hard copy	Resources Coordination Group ensures eligibility criteria met Level of funding determined School receives notification	SSG meets to make recommendations to the Principal on the resources required to implement the educational plan for student Funding begins at start of new school year	Student Review occurs at Year 6-7 transition

← SSG meets regularly to develop and oversee educational plan for student →

Eligibility for PSD funding

To be eligible for PSD funding, students must be enrolled in a government school and have a moderate-to-severe disability within seven categories of disability.

- **Autism spectrum disorder:** a diagnosis of autism spectrum disorder and significant deficits in adaptive behaviour with two standard deviations below the mean and significant deficits in language established by a speech pathologist.
- **Hearing impairment:** a bilateral sensory-neural hearing loss that is moderate, severe or profound and the student requires intervention or assistance to communicate.
- **Intellectual disability:** sub-average general intellectual functioning with two standard deviations below mean score, as well as significant deficits in adaptive behaviour and history of an ongoing problem and history.
- **Physical disability:** must be significant, and or a significant health impairment and require paramedical support.

- **Severe behaviour disorder:** disturbed behaviour and deviant behaviour with the frequency such that the student requires regular psychiatric or psychological treatment and the behaviour does not fit into other defined categories. History or evidence of an ongoing problem with expected continuation must be shown.
- **Severe language disorder with critical educational needs:** a score of three or more standard deviations below the mean for the student's age in expressive or receptive language skills on recommended tests is required. The disorder must not be attributable to a hearing impediment, social or emotional factors, low intellectual functioning or cultural factors. A non-verbal score not lower than one standard deviation below the mean is required.⁹⁷⁵
- **Vision impairment:** less than 6/60 visual acuity with corrected vision or visual fields of less than 10 degrees.⁹⁷⁶

⁹⁷⁵ Ibid 28–29.

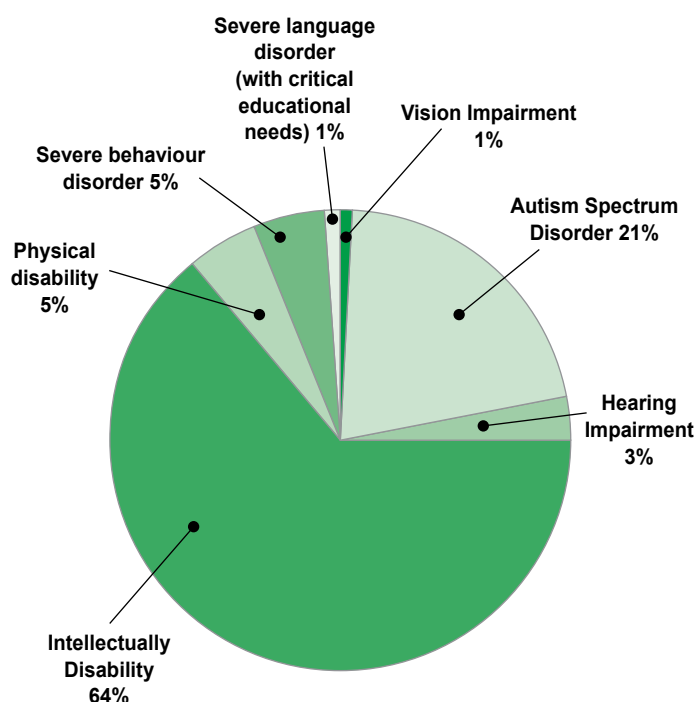
⁹⁷⁶ Partially sighted students may obtain support of visiting teachers or the Statewide Vision Resource Centre. Eligibility criteria are: 6/18 or vision fields of less than 20 degrees. Ibid 25.

⁹⁷³ Ibid 21.

⁹⁷⁴ Ibid 11.

The majority of PSD applications and funding allocations are associated with intellectual disability.

Figure 12: Proportion of total PSD funding by category of disability, 2012



Levels of funding

For the purpose of establishing eligibility, the PSD only requires one category to be demonstrated. The level of PSD funding provided to the school for the support of a student is based on the Educational Needs Questionnaire (ENQ) submitted by the school with the PSD application.⁹⁷⁷

There are six levels of funding.

Figure 13: PSD funding levels 2012⁹⁷⁸

Level	Amount of funding paid to school
1	\$6,095
2	\$14,095
3	\$22,250
4	\$30,366
5	\$38,421
6	\$46,519

⁹⁷⁷ Ibid 11.

⁹⁷⁸ <www.education.vic.gov.au/management/srp/budget/ref015/psd1-6.htm> at 4 July 2012. 2012.

It is the students' needs, and not their disability category, that determines the level of funding under the PSD. This is because two students eligible under the same category may have different needs and have different funding levels. Alternatively, two students eligible under different categories of disability may have the same ENQ profile and receive the same amount of funding.⁹⁷⁹

Within the PSD, the largest proportion of students (40 per cent) receives Level 2 support. Level 3 accounts for 26 per cent and Level 1 accounts for 10 per cent of PSD student numbers.⁹⁸⁰

Figure 14: Number of PSD students by level of funding 2008–2011⁹⁸¹

Funding level	2008	2009	2010	2011
Level 1	2,772	2,701	2,619	2,463
Level 2	6,381	7,219	7,955	8,425
Level 3	4,311	4,768	5,257	5,512
Level 4	2,074	2,062	2,016	2,017
Level 5	809	817	824	810
Level 6	501	488	478	477
Non-Level Funding ⁹⁸²	1,022	1,061	1,121	1,179
Total	17,871	19,115	20,270	20,883

The level of PSD funding, and the overall investment in the program, is much higher than that in Catholic and Independent schools. This may account for a greater proportion of students with higher levels of support needs in the government school system. However, in the absence of data on the range of disabilities and the support needs of students in Catholic and Independent schools, it is impossible to test this.

⁹⁷⁹ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

⁹⁸⁰ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

⁹⁸¹ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

⁹⁸² Non-level funding refers to students in deaf facilities or autism specific schools, where school/facility based resourcing agreements exist. They do not get a 'level of support' amount. Information provided to Commission by Student Wellbeing and Engagement Division, DEECD 17 August 2012.

How PSD funding is used

It is important to note that PSD funding is not given to the individual student. Instead, it goes to the school as part of its student resource package. DEECD states that '[i]t is the responsibility of the school, in consultation with parents, to determine how the resources are used'.⁹⁸³

Schools may use PSD funding for:

- special teachers/integration teachers
- education support staff
- associated payroll tax
- relief teaching
- interpreter
- curriculum resources
- specialised equipment
- consultancy or professional development
- speech pathology
- physiotherapy
- nurse
- occupational therapy
- superannuation.⁹⁸⁴

Parent experiences of the PSD

Of the parents who answered questions about the PSD in our survey, 57.2 per cent said they had applied for this funding.⁹⁸⁶ Of these, three-quarters (189 students) had their application approved.⁹⁸⁷

This is lower than the actual rate of approval for PSD funding. DEECD data shows that approximately 88 per cent of all PSD applications meet the eligibility criteria.⁹⁸⁸

The high approval rate for PSD applications noted by DEECD may itself be both an under-reporting and over-reporting of demand. In some cases, parents may not bother to make an application if they are told by a school that they have little prospects of success (whether this is the case or not).⁹⁸⁹

Conversely, some schools may submit PSD applications in the hope that they may be successful when they are unlikely to be. There is no firm evidence to determine this either way, however, our survey does point to some under-reporting of demand.

Figure 15: Outcomes of PSD applications by disability category type 2012⁹⁸⁵

Disability category	Applications made	Eligible	Not eligible	% eligible
Autism spectrum disorder	1,163	973	190	84%
Hearing impairment	138	136	2	99%
Intellectual disability	3,225	2,958	267	92%
Physical disability	268	194	74	72%
Severe behavioural disorder	467	399	68	85%
Severe language disorder	104	42	62	40%
Vision impairment	26	26		100%
Total	5,391	4,728	663	88%

⁹⁸⁶ As it is only government school students who are eligible for PSD funding, questions about the program were only asked for parents in the government school system. Out of 449 parents who answered this question 257 had applied for PSD funding..

⁹⁸⁷ 189 applications out of 250 applications reported. Sixty-one applications (24.4 per cent) had been refused.

⁹⁸⁸ This disparity is most likely due to a skewing in our sample due to the subject matter of the survey being discrimination.

⁹⁸⁹ 'School principals reported that they generally adopt a conservative approach to applying for support-only applying for students they consider to have a high probability of meeting the funding criteria'. Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 13.

⁹⁸³ Above n 978.

⁹⁸⁴ Ibid.

⁹⁸⁵ Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

For example, out of 449 parents who answered this survey question, 80 (17.8 per cent) had not applied for PSD funding because they did not think their child would be eligible. Another 112 parents (24.9 per cent) who were in the government school system had not heard of the PSD, even though they may well have been eligible for assistance.

Of the parents in our survey who had applied for PSD at their current school, the majority (67.5 per cent or 166 parents) said it had been their first application. Another 45 parents (18.3 per cent) had applied for the mandatory Year 6–7 review, while 23 parents (9.4 per cent) had sought a reappraisal of funding. Three parents had made a special application due to the deteriorating health of the child, and nine had made an out-of-round application.

Problems identified by parents and educators

Eligibility criteria seen as rigid and inflexible

A number of parents said they felt the current funding criteria were inadequate or too restrictive. One parent responding to the survey summed up what appeared to be a common dilemma for parents whose children need support for their disability but do not qualify for this funding:

She has been assessed for the Program for Students with Disabilities, her IQ assessment was too high to qualify, but her IQ was too low to qualify for severe language disorder with critical educational needs. Her IQ is 82. I have spoken to the school numerous times to see what other supports are available for my daughter and have been informed there is no other supports, they are doing all they can, due to budget constraints. Report time is very disappointing when you are continually informed your daughter is 'well below expected level', but what is required to increase her level is unavailable.⁹⁹⁰

990 Parent of student with learning disability, language disability and sensory disability attending a government mainstream school. Parent survey participant. See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 15.

Some categories of disability not eligible

Parents and educators also noted that some forms of disability are not covered by the seven PSD categories. The most frequently mentioned by parents in our research were dyslexia and Asperger's syndrome:⁹⁹¹

I was told by my son's last three schools that no funding was available to him through the PSD scheme as he was Asperger's diagnosed which doesn't meet the criteria. I was forced to sign an application form this year by the Grade 7 assisting principal to try and obtain funding via a student with severe behavioural problems scheme which included forced application to enrol into an intervention school, for psychologists to assess my child and have DHS involved into investigating my son's welfare at home. All of the reports to be generated through the funding that might be provided later in the year will only be viewable for the department and not myself. I am concerned about the lack of clarity surrounding our sensitive information and privacy rights:⁹⁹²

I have heard that my child is not eligible as dyslexia is not recognised as a disability in Victoria. This is heartbreakingly unfair ...⁹⁹³

Some educators shared this frustration:

At the beginning of the survey, I included nine students with disabilities. That number only includes those students that currently have funding – there are probably at least four times that many students who are either undiagnosed or do not meet PSD criteria but in fact require funding and aide support.⁹⁹⁴

Asperger's funding needs to be looked at, these kids struggle with everything at school and receive no support with their education.⁹⁹⁵

In my experience, the supports in schools for students with severe and moderate disabilities are excellent. Where mild to borderline disabilities are relevant there is frustration with the PSD system which has categories which are exclusive. Behavioural/emotional disorders for students who are of borderline intellectual abilities are not addressed adequately by the PSD ...⁹⁹⁶

991 See e.g. case studies 3, 14, 30, 34.

992 Parent of student with multiple disabilities attending a government mainstream school. Parent survey participant.

993 Parent of student attending government mainstream school. Parent survey participant.

994 Specialist support provider, government mainstream school. Educator survey participant.

995 Educator survey participant.

996 Classroom teacher, government mainstream school. Educator survey participant.

In response, DEECD states that the needs of these students should be met by the school using the global school budget and other programs, including the Language Support Program and targeted initiatives around dyslexia.⁹⁹⁷

However, as identified by some educators, schools struggle to achieve this goal, as it is dependent on their base budget being adequate in the first place:

The funding provided to compensate schools is good but nowhere adequate to support these high needs students many of whom need 1:1 support. While schools generally do excellent work to modify and accommodate for these students needs, there are categories where schools struggle to cater for needs from within the global budget. Schools with high numbers of families of disadvantage tend to have a high 'borderline' population of students for whom they cater for without supports. This comes down also to school funding being adequate generally for schools with higher needs.⁹⁹⁸

Cut-off points for eligibility

The cut-off points for eligibility also attracted a large proportion of comments from parents dissatisfied with the PSD:⁹⁹⁹

My child missed out because his IQ was two points above the cut-off. He was also not violent enough to be considered a risk to others or himself.¹⁰⁰⁰

My son's language scores always come out too high, even though he is always described by speech pathologists as having severe pragmatic language disorder. It is extremely frustrating that DEECD pretty much uses this one aspect of all the reports we submit to cancel out every other recommendation that he receive assistance.¹⁰⁰¹

In my view, the current criteria 'composite' scoring around expressive and receptive language deficits is extremely narrow, failing to recognise the totality and complexity of the language problems many of these children suffer. It is often a clinical condition that ASD children will score highly on some of these areas but have severe deficits in pragmatic areas.¹⁰⁰²

When my son was diagnosed on the autism spectrum I was pleased as I thought that he would now be given the support he needs in the classroom. I was devastated when, because of his IQ, he did not fit the criteria.¹⁰⁰³

My son missed out qualifying by three db [decibels] in his better ear – he would qualify in his worst ear.¹⁰⁰⁴

I have always been told by school bureaucrats that language disorders do not qualify; and her attention deficit disorder is not disruptive to anyone else – she is not hyperactive, just unable to focus, so she only disrupts herself.¹⁰⁰⁵

997 'It is what the teacher does that usually makes the greatest difference for students with dyslexia, and all disabilities ... The actions currently being undertaken are: website with advice on teaching, information about learning and reading difficulties and dyslexia, a manual for schools is being developed by a leading academic in this area, statewide training program under national partnerships'. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

998 Classroom teacher, government mainstream school. Educator survey participant.

999 New South Wales has a 'special consideration' category for funding: students who do not clearly meet the disability criteria but need additional support. Each region can give special consideration based on a student's needs. This is subject to annual review. '...less than 600 students state-wide accessed specialist support via special consideration in 2010; this is around 1.8 per cent of the approximately 33,000 students receiving specialist support services'. State of NSW, *NSW Government Response to the Inquiry into the Provision of Education to Students with Disability or Special Needs* (2011) 15.

1000 Parent survey participant.

1001 Speech Pathology Australia reported that while 'The World Health Organisation states that if students score 1.0 standards deviations below the mean, students are considered to have a language disorder. The Education Department uses 3.0 standard deviations below the mean as the criteria for language disorders.' Submission 11, Speech Pathology Australia 8.

1002 Case study 4. See also HASD 1 for discussion of limitations of eligibility.

1003 Parent survey participant.

1004 Parent survey participant.

1005 Parent survey participant.

Complex application process with a deficit focus

A number of parents in our survey spoke of the challenges the PSD application process, especially its complexity and what they found to be burdensome evidence requirements:

Long-winded, tiresome to complete, the same questions over and over.¹⁰⁰⁶

The process is very intense and time consuming for minimum return.¹⁰⁰⁷

The costs of assessment were also prohibitive for some parents:

I had to spend heaps of money on reports from private specialists.¹⁰⁰⁸

Some educators were also critical of the process, although this was usually linked to concerns about inadequacy of resources generally:

Schools are not supported to provide places to students with disabilities. It's a lengthy and uphill battle to obtain adequate funds for resources and aides. The PSD application process is like a chess game.¹⁰⁰⁹

More often, however, parents expressed concerns about the deficit-based assessment model adopted by the PSD program:

The level of information from my daughter's life was overwhelming, confronting and daunting. The ongoing focus on her challenges and difficulties, and emphasising these instead of her capabilities and potential, was a very depressing, emotionally draining process whereby you start [to] doubt everything you and your child have gone through to get to the level that they are at and decision of school you came to.¹⁰¹⁰

It seemed all they wanted to know was what she couldn't do and where her areas off need were most noticeable. Rather than what strengths she had and where a change could have helped her. The whole process took ages and was quite depressing for me. I was warned you had to steel yourself for the worst, but it was a very soul destroying process ...¹⁰¹¹

1006 Parent survey participant.

1007 Parent survey participant.

1008 Parent survey participant.

1009 Specialist support provider, government mainstream school. Educator survey participant.

1010 Parent survey participant.

1011 Parent survey participant.

Some parents also reported a perverse incentive to make their child's disability seem as bad as possible in order to secure PSD funding, which would provide the best chance for them to participate in education:

We took our son off all his medication prior to his last assessment to ensure he presented as badly as possible as that was the only way we could easily gain access to a special school for secondary school. We would have preferred to stay in mainstream but had no confidence that he would receive adequate funding and that he would deteriorate dramatically behaviourally with inadequate support and we were not prepared to take this risk.¹⁰¹²

Testing methods seen as non-inclusive

A few parents noted that the assessment methodology itself was non-inclusive of some disabilities, with a bias in testing against those students with specific communication needs, for example those who were non-verbal or had strong verbal but weak non-verbal skills.¹⁰¹³ Parents and students from culturally and linguistically diverse (CALD) backgrounds may face additional barriers:¹⁰¹⁴

... her learning disability is called a non-verbal learning disability. The language assessment that the Education Department use (CELF-4) to determine funding isn't sensitive enough for this particular learning disability as it is a verbal test ... She learns through verbal, it is all the non-verbal areas she struggles in.¹⁰¹⁵

Many of the questions are not suitable when applying for a student who is blind. Nor are the approved tests needed from specialists like speech, receptive and cognitive communication.¹⁰¹⁶

1012 Parent survey participant.

1013 See e.g. HASD, 1, 4, 12. See also case studies 4, 14, 15 and 23.

1014 A pre-school field officer in outer western Melbourne reports that significant time is needed to explain funding processes to CALD parents who struggle to navigate the system. Case study 13. See also CALD critical friends group.

1015 Parent survey participant.

1016 Parent survey participant.

Success may be dependent upon the school's willingness to support the application

While some parents spoke of strong support from their school when applying for funding, others had significant concerns. Some suggested that schools try to manage parents' expectations:

The school told me that my son doesn't meet all the criteria for funding, it is very hard to get and he is never really likely to get it.¹⁰¹⁷

There is a huge discrepancy between how it operates in schools. Schools do not give good advice to parents about eligibility and discourage parents from applying for funding.¹⁰¹⁸

A small number of parents reported that their school did not know about PSD funding at all or were unaware of key information, such as application cut-off dates:

... our vice principal had never heard of this funding. Nor did she offer to find out more about it. I subsequently tried to find out more about this and asked the psychologist who attends the school if she knew of the PSD funding. She also didn't know but rang the Education Department and found out the eligibility.¹⁰¹⁹

My eldest daughter has a mild intellectual disability and I'm afraid she was the guinea pig in me coming to learn about the PSD! Her state primary school had to have the application process explained to them by myself and then got her birth date wrong so she was given the wrong IQ test! She is now at a state special school, but her Prep year was inadequately dealt with and she suffered.¹⁰²⁰

Funding reviews and transitions

Several parents told us that uncertainty about ongoing PSD funding for their child was a source of significant anxiety:

... Because she was so young she scored well and got a good funding level which we were pleased about but [we were] even more pleased about the fact that it was ongoing so we haven't had to apply each year. I am terrified about reapplying when we get to high school because if we don't get the large funding we won't have enough money for Auslan interpreters for performances or any extracurricular activities. In fact no funding is most likely because our daughter has been very well supported with lots of extra help from her parents and is now doing

1017 Parent survey participant.

1018 Parent survey participant.

1019 Parent survey participant.

1020 Parent survey participant.

very well at school and I think that we will be punished for this.¹⁰²¹

Others were concerned that funding reviews were either too frequent or not frequent enough:

I feel a program that reassessed more frequently might be fairer as many kids could benefit hugely from some extra aid in the first few years of school but don't necessarily need it all the way through.¹⁰²²

We have a child/young adult that will have this condition for the rest of his life. There is no miracle operation or medication that can heal him, so why do I, we and he have to continually fill out these forms at each different juncture in his learning life cycle? We just want extra help to make sure he gets the very best education possible for his future.¹⁰²³

One educator responding to our survey also commented on the funding model:

... only allows aides for severe cases and is applied for in June/July for the following year ... therefore students may be diagnosed in August of a given year, but not receive funding, if eligible, until 18 months into the future.¹⁰²⁴

Parents and teachers also noted that funding might be reduced over time if a child is doing well, even though the level of support needed to ensure participation on an equal footing with others remains the same. This appeared to be a particular issue in the transition from primary to secondary school when the Year 6–7 reviews take place, as noted by the Victorian Auditor-General.¹⁰²⁵

My son had level three in primary school which was automatically reduced to level two 'because we expect improvement into high school'. We are now in year eight and still fighting for a review of this absurd decision.¹⁰²⁶

Often students that are funded in primary school lose their funding as they approach high school. This sets them up for failure and the debilitating issues associated with the mental trauma that results from an inability to cope with the demands of secondary school. This often marks the start of a downward spiral often resulting in behavioural issues. The system is failing many students by imposing such stringent criteria for funding.¹⁰²⁷

1021 Parent survey participant.

1022 Parent survey participant.

1023 Parent survey participant.

1024 Educator survey participant.

1025 See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 17.

1026 Parent survey participant.

1027 Classroom teacher, government school. Educator survey participant.

Transparency and timing of funding decisions

Some parents expressed concerns about how and when they were notified of funding decisions. One reported that the school did not inform them of the result of their PSD application:

I feel that outcomes of the decision should be made earlier so that parents can plan for their future and their everyday life, finding out at the very end of the school year for grade six and year seven leaves parents on [tenterhooks] and we feel like second class citizens who can't plan for their future like everybody else.¹⁰²⁸

Parents should be notified directly by letter regarding the PSD outcome. Our school lied and offered our son 10 hours of aide time as he only had level two funding. When I rang the department it was established that he had level three funding.¹⁰²⁹

We were advised by the Department of Education that the school would be able to advise why she was not accepted. The school was as helpful as they could be but we weren't provided with any information. I did a further follow up with the Department of Education and they were still unable to tell me why she was not accepted. I find this totally inappropriate. If we applied for funding and she wasn't accepted we should have freedom and transparency in the process.¹⁰³⁰

Others were disappointed by delays in decision making and the time taken for appeal processes, especially while the school remains without funding for the their child:

The decision making and appeal time was appalling – 12 months including the appeal.¹⁰³¹

Necessary adjustments are less likely to be made if the student does not attract PSD funding

Many responses from both parents and educators indicated that there is less likelihood of adjustments being made to support students with disabilities who do not qualify for PSD funding.

1028 Parent survey participant.

1029 Parent survey participant.

1030 Parent survey participant.

1031 Parent survey participant.

This is despite the DEECD policy that schools support students using the student resource package and other initiatives.¹⁰³²

According to one educator:

Mainly adjustments are made for students who get funding through PSD. Many other students who do not qualify for funding attract very little intervention unless their behaviour becomes an issue.¹⁰³³

When asked if adjustments were made, a visiting teacher said:

It usually happens for funded students. The unfunded students gets considered depending on the needs of the child, the aggression of the parent and the willingness of the school to accommodate these needs within the budget.¹⁰³⁴

Many educators in the survey expressed concern for students ineligible for funding. They were also concerned about the impacts of inadequate support for students with disabilities on other students:

All children deserve an education and our school is a richer place for having children with a disability. It is often difficult to give the children a full education due to the hard time obtaining funding let alone adequate funding.¹⁰³⁵

1032 'The Department of Education and Early Childhood Development provides a range of resources to schools to enable the delivery of a high quality program for all students, including students who are having difficulty learning. These resources may be provided in the student resource package, the Language Support Program, student support services including psychologists, social workers, youth workers, speech pathologists and visiting teachers or through specific early identification and intervention programs.' Key informant interview, Student Wellbeing and Engagement Division, DEECD.

1033 Special needs coordinator, government mainstream school. Educator survey participant. See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 11.

1034 Educator survey participant.

1035 Classroom teacher, government mainstream school. Educator survey participant.

There is not adequate staff in order cater for student needs. Kids with behavioural issues (ADHD) are often not funded so staff don't receive the time and assistance they need. This also disadvantages other kids in the school as teachers have to spend so much time on behaviour management rather than teaching.¹⁰³⁶

[The PSD] often leaves many students unfunded. These students just miss out by an unknown whisker and then schools are left to support these students in the classroom. The whole process is inadequate and whilst we may celebrate the support of those students funded we ignore those students who just miss out and they are left to rely on classroom support where they are one of up to 25 or 30 students in a class. It is an atrocious situation for these students.¹⁰³⁷

Some are clearly struggling to work with children with disabilities:

We have a student who cannot read, write, spell, walk, and is not toilet trained (even for bowel movements). We are funded just enough to clean his 'nappy' every day. Teachers are supposed to teach this child in a normal 25 student class? He can't hold a pen! He can't feed himself, can't do anything ...¹⁰³⁸

Even if eligible, funding may still be inadequate

Among those parents in our survey who had been successful in securing PSD funding, less than half reported that the funding provided the support necessary for their child to participate effectively in school. This is despite the stated aim of the program to 'maximise student potential growth in education and learning, and ensure that students with disabilities are valued and participate in all aspects of school life, consistent with optimal and relevant goals and aspirations'.¹⁰³⁹

Of 188 students eligible for PSD funding:

- 82 parents (45.1 per cent) said the PSD provided full support for participation
- 99 parents (54.4 per cent) said the PSD provided partial support.¹⁰⁴⁰

¹⁰³⁶ Classroom teacher, government mainstream school. Educator survey participant.

¹⁰³⁷ Assistant principal, government mainstream school. Educator survey participant.

¹⁰³⁸ Classroom teacher, government mainstream school. Educator survey participant.

¹⁰³⁹ Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 1.

¹⁰⁴⁰ One parent who answered this question was not eligible for PSD.

Parents consistently told the Commission that PSD funding was inadequate, either in quantum or because a comprehensive range of supports needed to ensure participation was not provided:

As it is issued in a lump sum it doesn't take into account CPI increases or salary increases, therefore the amount available decreases each year. The school has to make the difference or fundraise or, as is the case, my daughter goes without (such as decreased working hours for her aide).¹⁰⁴¹

Even though my son clearly meets the criteria for PSD funding, it doesn't fully support his educational needs in the classroom. He requires speech pathology and occupational therapy support in the classroom to facilitate basic reading and writing, which has been minimally provided at school. I have paid for a private therapist to visit his classroom to assist with this. He also requires a behaviour management program and therefore his teacher should have access to a psychologist but the psychological component has been removed from school ...¹⁰⁴²

Educators also noted that inadequate funding was a significant barrier to schools delivering an individualised approach to supports. This is consistent with research by the Australian Education Union, which found that 40.6 per cent of teachers identified accessing suitable resources for students with disabilities as a 'main concern' in the operation of their school:¹⁰⁴³

Some things are just out of reach through lack of funding.¹⁰⁴⁴

Whilst we do everything within our power, the lack of financial support is our biggest issue. Many children who need aides don't receive funding and children who have aides don't receive as much support as they need ...¹⁰⁴⁵

¹⁰⁴¹ Parent survey participant.

¹⁰⁴² Parent survey participant.

¹⁰⁴³ Australian Education Union, State of our schools survey 2011 (2012) 2. <http://www.aeuvic.asn.au/research_9_67504896.html> at 5 July 2012.

¹⁰⁴⁴ Classroom teacher, government specialist school. Educator survey participant.

¹⁰⁴⁵ Classroom teacher, government mainstream school. Educator survey participant.

I work in two Prep classes which contain altogether six children with disabilities but only one is funded under the current guidelines. These other children cannot function in the classroom environment without an aide. It is not possible to give these children the best education/ opportunities without more aides.¹⁰⁴⁶

I feel like I am lying when I tell parents we are fully supporting their child (those that cannot get funding) and you see the struggle the child and the teacher have to do the best they possibly can. The PSD process and funding is a disgrace!¹⁰⁴⁷

I try and coordinate this program (as an assistant principal), I love the students that I work with and become very frustrated when I am unable to provide them with everything they need. We are inadequately funded ... Coordinating the disabilities program is only a tiny part of my overall role, I always feel like I am not doing my job properly, I work 10 hours a day, five days a week and also work at home at night but still can't do it all.¹⁰⁴⁸

Links to part-time attendance

In a few cases, inadequate funding may also lead to part-time schooling if the relevant support, typically an integration aide, cannot be funded full-time. As noted in Chapter 9, this appears to be happening even though part-time attendance is clearly against DEECD policy, except in very exceptional circumstances.¹⁰⁴⁹

Filling the PSD funding gap

From responses provided to the Commission, it appears that parents and individual teachers are bearing the financial burden of providing the necessary supports for students who don't qualify for PSD funding and those who are funded at a level that, in the view of the parents and school, does not meet the student's need.

As discussed in Chapter 6, the *Program for Students with Disabilities Guidelines* make it clear that parents are not required to make financial contributions to top-up PSD funding:

Victorian legislation requires that instruction in the standard curriculum program must be provided free to students in Victorian government schools. Free instruction includes the provision of learning and teaching activities, instructional supports, materials and resources, and administration and facilities associated with the standard curriculum program. The costs associated with the administration and coordination of the standard curriculum program is considered to be part of free instruction and must not be passed onto parents. The legislation provides that a parent of a student with a disability or impairment is not required to contribute to the cost of the provision of additional support for the education of that student.¹⁰⁵⁰

Parental contributions being required by schools to provide reasonable adjustments for a student with disability is unlawful under the Education and Training Reform Act and is likely to amount to unlawful indirect discrimination under the Equal Opportunity Act.¹⁰⁵¹ Nevertheless, parents reported that it is happening in some Victorian schools.

In some cases, this may include parents paying for speech or occupational therapy conducted at home to supplement inadequate provision at school. However, in other cases, it was explicitly reported that parents were paying for integration aide support at school, either in the long-term or to cover short-term staff absences.¹⁰⁵² In addition, the Commission was informed of instances where parents paid for the services of specialist therapists:

Many students will need specialised occupational therapy to teach them to write and teachers only have access to an OT if a parent is paying for one to come into the classroom (like I did) or the consultant OT comes in the classroom because she has a student there who is also a private client.¹⁰⁵³

1046 Integration aide, government mainstream school. Educator survey participant.

1047 Assistant principal, government mainstream school. Educator survey participant.

1048 Educator survey participant.

1049 Students are expected to attend normal school hours (between 9 am and 3.30 pm) every school day of each term. *Education and Training Act 2006* (Vic) s 2.1.1. The Student Engagement Policy Guidelines provide further information about attendance policy and procedures. See Department of Education and Early Childhood Development, 'Student Engagement Policy Guidelines', above n 434.

1050 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 20. See also *Parent Payments in Victorian Government Schools*. <<http://www.education.vic.gov.au/management/governance/spag/management/parentpayments>> at 22 June 2012.

1051 *Education and Training Reform Act 2006* (Vic) s.2.2.6; *Equal Opportunity Act 2010* (Vic) s 38.

1052 This is discussed in Chapter 6.

1053 Parent of student attending a government specialist school. Parent survey participant.

Most of my son's funding was not spent on him, whilst I am taking out personal loans to pay for therapists to go into the school and work with him and his teachers, devise behavioural management plans. I supply essential equipment like writing boards and weighted blankets, as they have no money, yet they had three level four funded students in one classroom with one aide.¹⁰⁵⁴

Having to push to get assistance with a small primary school with little or no funds so I had to hire the extra assistance myself.¹⁰⁵⁵

In one case, parents wanted to pay for extra help at their child's school and had been doing so but this arrangement had to end. These parents did not agree with the 'no contribution' policy:

It would be great if there could be more flexibility about allowing parents to contribute to funding initiatives for their own children where they can – waiting for an appointment from the school psychologist just isn't the answer for us given the waiting lists and his level of need.¹⁰⁵⁶

Some educators also reported making personal contributions to assist the students with disabilities in their care:

We simply do not have the resources to provide for all these students' needs all the time. It is due to a lack of funding being available. We do the best we can but it often requires teachers spending their own money to purchase what a student needs to participate fully in their learning.¹⁰⁵⁷

We could do so much more if we had more funding in schools ... I know at our school I often pay for things out of my own pocket if the funding bucket is empty and some small thing will make a difference. Sometimes in comparison to mainstream students that one small, tiny step in progress is enormous and that's what we work towards.¹⁰⁵⁸

Accountability for PSD funds

Accountability to students and parents

A major issue in the research, linked to the issue of parent-teacher communication and consultation, was the issue of understanding how PSD funding is spent. Many parents indicated they do not understand how money allocated to schools will be spent and how it will be used to support their child:¹⁰⁵⁹

I am completely unclear about what it means to get to level one, two, three etc of funding and how many contact hours with his aide my son is entitled to without part of his own funding disappearing into other areas of the school.¹⁰⁶⁰

Some parents felt that decisions were made unilaterally by the school, without any consultation with parents. These parents appeared to have no understanding about how the funds would be used and believed the funds simply went into a pool to be used at the school's discretion without any input from parents.¹⁰⁶¹

This gap in communication and consultation can affect the overall relationship between the school and parents and result in tension, conflict and resentment, as these responses indicate:

The school sees my son for the money he attracted to the school.¹⁰⁶²

There is a lack of respect for parents' thoughts and opinions.¹⁰⁶³

Some parents reported strong and cooperative relationships with the school and effective consultation through the SSG.¹⁰⁶⁴ A number spoke positively about the use of PSD funding, their contribution to discussions about how it would be used and their understanding that the teachers and principal were doing the best they could within their constraints:

1059 A similar finding was noted in the review of the *Disability Standards for Education 2005*. This suggests that this may be an issue across the country. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 35.

1060 Parent of student attending a government mainstream school. Parent survey participant.

1061 Parent survey participant.

1062 Parent of student being home-schooled. Parent survey participant.

1063 HASD 12.

1064 A student support group is compulsory for all PSD-funded students. It is responsible for developing the PSD application, identifying the student's needs and mapping the supports needed for effective participation.

1054 Parent of student attending a government mainstream school. Parent survey participant.

1055 Parent of student attending a government mainstream school. Parent survey participant.

1056 Case study 30.

1057 Educator survey participant.

1058 Integration aide, government mainstream school. Educator survey participant.

We have direct involvement with how this funding is to be spent. Our opinions are listened to and we have total faith in the decisions made for our son. Nothing is changed without us being consulted and we are always well informed of any changes.¹⁰⁶⁵

Time and money is always a problem ... the school has largely tried their hardest.¹⁰⁶⁶

One concern raised repeatedly with the Commission by parents was the apparent disconnect between PSD eligibility being determined on an individual basis but funding being allocated to the school and utilised within its total budget.¹⁰⁶⁷ This situation is a significant source of frustration for parents who are focused on ensuring their child can participate in school on an equal basis as others. They perceive that the current system lacks accountability for the manner in which funds are spent.

Educators also commented on the gap in communication between parents and the school. Some spoke about 'misunderstandings' or 'unrealistic expectations' of parents regarding the role of schools in allocating funding:

Parents feel 'that is my money and it needs to go towards my program'.¹⁰⁶⁸

There is still a disconnect about what happens if those services just aren't available.¹⁰⁶⁹

In the eyes of most parents, however, the PSD funds belong to the student and should therefore be spent to meet that student's individual learning needs. However, in practice, PSD funds are pooled to maximise participation.

This would not create problems if the amount of funding and the delivery of supports met the individual needs of every student with disability in receipt of funding. However, as this research shows, there continue to be unmet needs, and the stresses associated with this are amplified for parents who feel they have been through a complex and intrusive funding application process that has not delivered what their child needs to fully participate in school.

Some parents understood that PSD funds were pooled but did not agree with this approach. Others were under the mistaken belief that funding was fully individualised and attached to their child:

The parent has no say in how the funding is spent! Yet we are the ones who know our children best. The school doesn't even have to justify or explain where the funding is going.¹⁰⁷⁰

Parents do all the work applying for this funding only to be left in the dark and the school gives out whatever they like.¹⁰⁷¹

One parent said that they had no problem sharing funds across the school. Others did not oppose the pooling of funds but wanted a stronger say in how the funds were used:

My child has received full support and I have nothing to complain about but other children who struggle as much as he does receive no support and I hope the school uses some of his support for those who get nothing.¹⁰⁷²

The special school obtained the full PSD monies, however as parents we are not allowed to have any input into how their funds are used for our child. I can understand the complexity of needing to organise school structures around funding, however there is no consultation with parents at all about their child's needs and how they would best see funding used.¹⁰⁷³

There still needs to be someone in control of the funding ... 50/50 parents and schools. Parents can't just say what happens, and neither can the teachers.¹⁰⁷⁴

Parents also noted that the value of the funding in terms of outcomes for their child was closely tied to workforce capacity in schools:

The PSD has the potential to be successful only if properly trained staff are employed in schools. Like any learning institution, success depends on staff attitudes.¹⁰⁷⁵

The funding is all used for aide time. There is no usage of it to help teachers learn more about OT support that they might provide or better ways to scaffold my daughter's learning ...¹⁰⁷⁶

1065 Parent of student attending a government mainstream school. Parent survey participant.

1066 Parent of student attending a government mainstream school. Parent survey participant.

1067 The 'student resource package'.

1068 HASD 3.

1069 HASD 3.

1070 Parent of student attending a government mainstream school. Parent survey participant.

1071 Parent of student attending a government mainstream school. Parent survey participant.

1072 Parent of student attending a government mainstream school. Parent survey participant.

1073 Parent of student attending a government specialist school. Parent survey participant.

1074 HASD 6.

1075 Parent survey participant.

1076 Parent survey participant.

Overall, the comments from parents and educators combined indicate there needs to be greater communication and transparency about the use of funds, as well as a balance struck between the school's discretion to manage the use of funds with genuine input from parents. Central to this is a relationship of trust between parents and schools, which in turn requires greater consistency in how SSGs are established and run.

Accountability for PSD funding to DEECD

As noted by the Victorian Auditor-General in a 2007 review of the PSD, 'program accountability refers to the way delivery, performance and outcomes of the program are monitored, assessed and accounted for'.¹⁰⁷⁷

A sound accountability framework will be founded on good-quality performance information so that government can answer the question: how effective is the program in achieving its desired outcomes? For the PSD, the performance information required is the educational progress students in receipt of PSD are making at school.

In 2007, the Auditor-General found that:

DEECD has established a strong focus on outcomes at the individual student level through requirements for schools to work with, and report directly to, parents or carers on individual student planning and progress. However, DEECD has yet to establish a clear and consistently stated objective for the PSD and has yet to identify performance indicators to progressively monitor, and evaluate program outcomes for reporting to the minister, Parliament and the community on the effectiveness of the PSD at the whole-of-program level.¹⁰⁷⁸

The Victorian Auditor-General recently audited programs for students with special learning needs, including the PSD. He found that over the last five years 'DEECD has not established appropriate performance indicators to monitor outcomes for the PSD that are measurable and auditable'.¹⁰⁷⁹

The Commission notes that at a school level, principals are accountable for PSD funds. Each year, PSD funds are audited for financial compliance, as part of the audit of each school's school resource package. However, this financial audit does not include any processes for checking that each PSD student has an individual learning plan (ILP) or an active SSG. Rather it is focused on accounting for expenditure against income and ensuring there are no financial irregularities.¹⁰⁸⁰

As noted in Chapter 8 government schools are required to report on the number of students eligible for PSD funding who do not have an ILP in place. Schools must also report on the percentage of PSD students who are meeting the goals in the ILP. While this is welcome, this self-assessment by the school does not report on outcomes for individual students.¹⁰⁸¹

This means that there is currently no data capture at either a regional or state level to see whether the PSD funding is actually delivering improved learning outcomes for students with disabilities, all accountability rests at the school level. Accordingly, learning outcomes are expected to be monitored by the principal against the student's ILP.

While this is consistent with the policy trend towards devolution to local schools, the success of this as an accountability mechanism is entirely dependent on the ILP. This means that every principal in every school with a PSD student must have the skill, motivation and time available to make sure that:

- every PSD student has an ILP
- every ILP is of high quality
- deliverables under the ILP are monitored and adjustments made
- parents and relevant specialists are actively involved in all stages
- meaningful educational gains are made for the student using PSD funds.

1077 State of Victoria, Victorian Auditor-General, *Program Accountability: Program for Students with Disabilities Audit Summary* (2007) 2. <www.audit.vic.gov.au/reports_publications/reports_by_year/2007/20070919_students_disability.aspx> at 5 July 2012.

1078 Ibid 3. <http://www.audit.vic.gov.au/reports_publications/reports_by_year/2007/20070919_students_disability.aspx> at 5 July 2012.

1079 Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 31.

1080 Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 22 June 2012.

1081 All individual learning plans should reflect the Victorian Essential Learning Standards (VELS) or towards level one of VELS (ABLES) – this makes it possible to report on academic achievement. Potentially if this was linked to the Victorian Student Number outcomes could be monitored against PSD funding. Key informant interview, Student Wellbeing and Engagement Division, DEECD.

Given the feedback from parents, students and educators in other parts of this report, the Commission cannot be confident that this is always occurring. In common with the Auditor-General, we are concerned that the quality and use of ILPs is inconsistent across the state. We are also concerned that there is no mechanism available to enforce the PSD guidelines in any meaningful way.

Opportunities for improvement

The *Review of Disability Standards for Education 2005* reported that nationally 'stakeholders consider that resourcing available to meet the needs of students with disability is inadequate and this compromises the effectiveness of the Standards. It was argued that additional resources would assist students with disability to participate in education, provide professional development for educators and improve access to support services'.¹⁰⁸²

The review also found an increase in participation rates of students with disability. 'This is a positive development, but as a result, stakeholders are concerned that available resources are being stretched further to meet the needs of an increasing number of students'.¹⁰⁸³

Transitioning to a needs-based model that maximises outcomes rather than deficits

The Commission is mindful that the future of funding models for schools generally, and disability specifically, is currently unknown as we await the implementation of the recommendations in the Gonski Review.¹⁰⁸⁴

In its final report, the Review Panel recommended that in the future the costs of supporting students with disabilities should be included as an additional 'loading' within the Schooling Resource Standard in both government and non-government schools. This loading would be calculated based on data on the prevalence of disability and the level of adjustments needed by students with disabilities.

However, to achieve this, a common definition of disability needs to be agreed, and modelling undertaken on the value of such a loading. This work is currently under way.

¹⁰⁸² Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, viii.

¹⁰⁸³ Ibid vii.

¹⁰⁸⁴ In April 2010, the Australian Government initiated a comprehensive review of funding arrangements for Australian schools (the Gonski Review). The Review Panel delivered its report in December 2011. Australian Government, 'Final Report of the Review of School Funding' above n 27.

Potentially, this could mean a shift towards a needs-based model of funding assessment, rather than a targeted program that provides support to students with a specific range of disabilities and then applying a needs based assessment to determine the level of funding for each student. This approach would be more consistent with the principles of the *Convention on the Rights of Persons with Disabilities* and with the legal obligation under both federal and Victorian laws which require adjustments to be made based on need, so long as such adjustments are reasonable.

It would also be more consistent with obligations under the *Disability Standards for Education 2005* to maximise learning outcomes rather than focus on a deficit model of examining needs and making adjustments.

The Commission notes that in New South Wales the state education system is starting to shift towards a more needs-based system, under their *Every Student, Every School* reforms. Using Australian Government funding through the *More Support for Students with Disabilities* initiative, this is a new program that targets students with lower levels of additional need. Schools will receive support in two components: specialist teacher time and flexible funding.¹⁰⁸⁵ These resources will be allocated without the need to 'confirm' individual student's disability.¹⁰⁸⁶

In addition to *Every Student, Every School*, the Integration Funding Support Program (individual funding) will continue to support other students moderate-to-high levels of additional need due to disability.¹⁰⁸⁷

¹⁰⁸⁵ Schools are allocated flexible funding based on the schools 'student learning need' and the general prevalence of autism (estimated at one in 100 children). Specialist teacher time is calculated using a base (0.1 FTE for school under 160, 0.4 FTE for 160+ school) and a component based on the school learning need index. The school learning need index is calculated based on the number of students at a school that perform in the lowest ten per cent for literacy and numeracy in the NAPLAN over a three-year period. Specialist teacher positions will be for three years and funding will be allocated annually Government of NSW, 'Project details with background notes' *Every Student Every School: Learning and Support* (2012) 35-39. <www.det.nsw.edu.au/every-student-every-school> at 11 July 2012.

¹⁰⁸⁶ Ibid 31.

¹⁰⁸⁷ Ibid 36.

This needs-based approach was initially trialled in the Illawarra and the South East regions of New South Wales. The trial revealed many positives. For example, many smaller schools received funding for the first time and schools reported that the model was flexible, could provide more immediate support (without needing to wait for confirmation of disability) and that it resulted in a better 'whole school' approach. There was also positive feedback about the online training courses and the flexibility to make decisions based on educational need, rather than 'disability' categorisation. Areas for improvement identified by the trial included professional development for staff and support for transition.¹⁰⁸⁸

While Victoria's education environment differs from New South Wales, the question of how to effectively ensure the participation of all students using a funding model that is fair, flexible and based on need is a shared challenge and lessons might be learned from this trial and the broader suite of *Every Student, Every School* reforms.

Improving accountability for PSD funds

Currently there is no central system in place to track and check the progress of students in receipt of PSD funding. Nor are there specific performance indicators for the program.

Schools do have the Victorian Student Number that could be further developed, however, this currently does not have the capacity to track individual progress or the achievement of goals for students, including students eligible for PSD funding.

Currently, all accountability measures are invested in the ILP of each student which are solely monitored by schools. Even so, there are some simple measures that DEECD could implement to improve accountability for PSD funds. These need not be expensive or burdensome on schools and all relate to existing requirements under the *Program for Students with Disabilities Guidelines*.

For example, DEECD regional offices could conduct a random audit of school networks to ensure that ILPs are in place, are of sufficient quality, contain the information set out in the *Program for Students with Disabilities Guidelines* and that SSG meetings have been taking place to monitor outcomes (for example, by checking minutes of the meetings). This need not be a large-scale exercise and could be done using a peer-review model in partnership between school networks and the DEECD region.

This would be an interim step while work progresses on building the capacity of the Victorian Student Number to measure outcomes for students and so enhance system accountability.

Recommendations

42. Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005*, and the Victorian Auditor-General's audit of programs for students with special learning needs, that the Department of Education and Early Childhood Development introduce key performance indicators for the Program for Students with Disabilities that are tied to educational outcomes. That these outcomes are measured in the first instance through a random audit of individual learning plans, and thereafter using an enhanced Victorian Student Number.
43. The Department of Education and Early Childhood Development undertake a review of eligibility criteria and the Educational Needs Questionnaire for the Program for Students with Disabilities to identify and remove any inherent bias against specific types and manifestations of disability.
44. The *Program for Students with Disabilities Guidelines* require schools to provide a clear report to parents on how funding allocated to the school is being used to make reasonable adjustments for the student, and that this information be included in plain language in the student's individual learning plan agreed with the parent.

¹⁰⁸⁸ Government of NSW, Department of Education and Communities, *Summary Report: Trial of the school learning support program in Illawarra and South East Region 2010–2011* (2011) 3–4.

Chapter 15: Building workforce capacity

Main findings

- One in five parents believe that lack of teacher training in disability is a barrier to their child being able to fully participate in education.
- Over half of the educators surveyed said they did not have the support, training and resources they needed to teach students with disabilities well.
- Forty per cent of educators were not aware of their legal obligations to students with disabilities under the *Disability Standards for Education 2005*.
- Victoria needs a teacher workforce that is better equipped to meet the learning and support needs of all students in their classrooms. To achieve this, teacher training university courses and ongoing professional development programs need a stronger focus on understanding and teaching students with disabilities across the full range of disabilities.

Workforce gaps in educating students with disabilities

Students with disabilities are likely to be found in almost every classroom in Victoria. Yet, as the Commission's research demonstrates, they still face significant barriers to accessing education on the same basis as other students and reaching their potential.

In some cases, this can be the result of antiquated attitudes held by a small minority of educators. However, the vast majority of educators we heard from want to deliver the very best education they can to all their students, including those with disabilities. However, many feel they do not have the support, training and resources they need to do this well.¹⁰⁸⁹

¹⁰⁸⁹ Educator survey participants. See also HASD 3, 5, 8, 13.

Parents and students are also acutely aware that some teachers do not understand disabilities, particularly those that are unfamiliar to them or those that have behavioural aspects. When asked why their child was not able to participate at school on the same basis as students with disabilities, one in five parents in our survey reported that their child's teachers do not have the necessary training. They also stressed that teachers need specific training in relation to their child's particular disability.¹⁰⁹⁰

The importance of skills training for educators was highlighted in submissions the Commission received. For example, a submission from Down Syndrome Victoria highlighted that 'skill development is the single most cost-effective method of improving outcomes for students with a disability' and stressed the need for 'systematic strengthening of teacher training and professional development in the area of disability'.¹⁰⁹¹

This lack of knowledge and practice expertise plays out in the daily lives of students with disabilities and inhibits everyone's best efforts to deliver a quality education.

¹⁰⁹⁰ See also HASD 1, 2, 4, 6, 12.

¹⁰⁹¹ Submission 3, Down Syndrome Victoria 1. See also submission 4, Emmy Elbaum, Parent Advocate; submission 5, Occupational Therapy Australia; submission 6, parent, submission 9, Vision Australia; and submission 11, Speech Pathology Australia. See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 22-23.

Educator experiences

The Commission's survey asked educators whether they felt they received adequate training and support as a teacher of students with disabilities. Of those who responded to this question, just under half said that they did.¹⁰⁹² However, there were significant variations in whether educators felt adequately trained, depending on their role in the school.

While overall 52 per cent of educators said they did not feel adequately trained and supported to teach students with disabilities:

- 62.3 per cent of classroom teachers said they were not adequately trained and supported to teach students with disabilities
- 54 per cent of school principals said they were not adequately trained and supported
- 40.6 per cent of integration aides said they were not adequately trained and supported
- 35.7 per cent of specialist support providers said they were not adequately trained and supported.

In the government system, educators in mainstream schools (61.1 per cent) were much more likely to report that they were not adequately trained and supported than their counterparts in specialist schools (22.6 per cent).

Educators were also asked whether there are particular kinds of disability they find more difficult to accommodate. Respondents identified the following disabilities they struggled to accommodate effectively:

- behaviour-related disability (297 respondents; 23.2 per cent)
- autism spectrum disorder (204 respondents; 15.9 per cent)
- physical disability (150 respondents; 11.7 per cent)
- mental health disability (123 respondents; 9.6 per cent)
- language disorders, including dyslexia (82 respondents; 6.4 per cent).

¹⁰⁹² 412 respondents said yes (48 per cent) and 446 respondents said no (52 per cent).

Poor knowledge of legal obligations under anti-discrimination law

Almost 40 per cent of educators surveyed by the Commission reported that they were not aware of the existence of the *Disability Standards for Education 2005* (the Standards).¹⁰⁹³ This confirms the findings of the *Report on the review of Disability Standards for Education 2005*, which found that knowledge about the Standards across education sectors, users and providers and the general community is low.¹⁰⁹⁴

Looking at the Commission's survey results by school type, 42.7 per cent of educators at government mainstream schools did not know about the Standards.¹⁰⁹⁵ A similar proportion of Independent school educators were not aware of the Standards.¹⁰⁹⁶ Of 14 Catholic mainstream school educators who answered this question, four were not aware of the Standards.¹⁰⁹⁷

Knowledge was better in government specialist schools, with 73.5 per cent of educators aware that the Standards exist.¹⁰⁹⁸ However, this still leaves one in four educators in schools that only educate students with disabilities unaware of their legal obligations.

The Disability Discrimination Legal Service submitted that there are various reasons why schools fail to comply with the Standards, but:

... one of the most prevalent ... is a lack of training, understanding or even knowledge of the *Disability Discrimination Act 1992* ... in public schools. However, even where the relevant school is aware of its obligations under the Standards, without the appropriate resources compliance is rarely possible.¹⁰⁹⁹

¹⁰⁹³ 329 respondents. Despite this, 22.7 per cent (194 educators) in our survey reported that they had witnessed discrimination at their school.

¹⁰⁹⁴ The review also found 'There is limited access to qualified professions and limited ongoing professional development in inclusive education'. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, vii.

¹⁰⁹⁵ 265 out of 621 government school educators.

¹⁰⁹⁶ Five out of 13 Independent school educators were not aware of the Standards (38.5 per cent). Independent Schools Victoria informed the Commission that each school should be aware of the Equal Opportunity Act and the Disability Discrimination Act and they make available a copy of the Standards to all schools attending relevant information sessions at ISV or should discussions indicate that more knowledge of the Standards is needed at the school. Key informant interview, Independent Schools Victoria.

¹⁰⁹⁷ That is 28.6 per cent.

¹⁰⁹⁸ Of 200 government specialist school educators, 147 were aware of the Standards, 53 were not.

¹⁰⁹⁹ Submission 7, Disability Discrimination Legal Service, 29.

When asked about discrimination laws at a 'have a say' day, an educator explained:

Most teachers know it but they may not have a detailed understanding.¹¹⁰⁰

Another educator said:

I don't think all teachers understand that they have a legal obligation to accommodate students with disabilities. More needs to be done for this information to go beyond the principal level.¹¹⁰¹

The Commission notes and welcomes that the Department of Education and Early Childhood Development (DEECD), the Catholic Education Commission Victoria and Independent Schools Victoria have all included significant programs of professional development for educators under each of their implementation plans for the rollout of the Australian Government's *More Support for Students with Disabilities* initiative. These are discussed at the end of this chapter. However, DEECD's implementation strategy is the only plan that includes dedicated training 'for all school staff to improve understanding of their obligations under the Standards and how to meet those obligations'.¹¹⁰²

Training and support for integration aides

A number of educators reported that integration aides – sometimes referred to as education support officers (ESOs) – play a crucial role in supporting the education of students with disabilities, with many commenting on the availability of aides, how aide time is used, the effectiveness of that time and the adequacy of their training. Comments from educators in our survey focused on concerns that teachers and aides are often left unsupported. Parents also expressed concern that aides are not adequately trained and supported.¹¹⁰³

Four out of 10 integration aides in our survey reported that they did not feel adequately trained and supported.¹¹⁰⁴ This is disturbing when, for many students with disabilities, the integration aide is the person on whom they are most reliant at school.

There are currently no formal qualifications required to work as an integration aide in a Victorian school.¹¹⁰⁵ However, certification requirements – such as a driver's licence, first aid certificate or safe food handling training – may be required to perform specific tasks.¹¹⁰⁶

According to DEECD, the role of an integration aide is to:

- provide routine support for teachers
- communicate with teachers and parents about routine matters
- provide basic physical and emotional care for students, such as toileting, meals and lifting
- communicate with students about comprehension of basic tasks and information
- address immediate behaviour issues relating to specific students within a classroom setting
- assist with coordination and planning of school routine in accordance with student needs.¹¹⁰⁷

An integration aide supports the educational services being provided to students but must not include duties of teaching, as defined in clause 2.6.1 of the *Education and Training Reform Act 2006*.¹¹⁰⁸

1100 HASD 3.

1101 Educator survey participant.

1102 Victoria and Commonwealth, above n 23, 6.

1103 The Commission notes that DEECD provides a range of professional development opportunities for staff employed as integration aides (education support staff) in government schools. These include standard and extension courses on 'a window into autism' and courses on 'literacy success', courses provided by the Victorian Institute of Deaf Education and professional learning grants. <www.education.vic.gov.au/proflearning/sso/default.htm> at 10 July 2012.

1104 That is seventy-three out of 180 integration aides that answered this question.

1105 See also Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 24.

1106 State of Victoria, Department of Education and Early Childhood Development, Human Resources Dimension of Work Education Support Class, 3. <www.education.vic.gov.au/hrweb/Documents/Dimensions_of_Work_descriptors.pdf> at 8 July 2012.

1107 Ibid 3–4.

1108 'Supervision of students cannot be required except where it is an integral part of the employee's position or involves supervision of students individually or in small groups, in controlled circumstances, where the responsibility for students remains clearly with a teacher.' Ibid 3.

In practice, however, many integration aides, will have attained a Certificate III in Education Support. This is commonly referred to as an Integration Aide/Teacher Aide (Certificate of Education Support). This TAFE course can be completed on campus, online or by correspondence. The estimated time to complete the qualification is one year, based on 10 hours a week, and includes a practice component.¹¹⁰⁹

Several participants in the 'have a say' days and survey respondents expressed concern that formal qualifications are not compulsory for integration aides and that this can lead to them being poorly paid and, in some schools, undervalued. Some suggested that formal qualifications should be mandatory for integration aides to work in a school and that this training should be supplemented with 'refresher courses' every two years. They also felt that parents should have a say in the recruitment of aides.¹¹¹⁰

Submissions also highlighted problems faced by integration aides, due to the significant pressures they face, a lack of experience and a lack of formal training to address the needs of students with disabilities.¹¹¹¹ Others noted that there are no opportunities for career progression for integration aides.¹¹¹²

From an educator's perspective, integration aides are at the bottom of the education ladder with very poor working conditions and low pay.¹¹¹³

Aides do not get paid enough, therefore it is difficult to find the right people to work with high need behavioural problems in mainstream schools.¹¹¹⁴

These concerns were also reported by integration aides:

The lack of job security and low pay means that many capable aides will leave the profession.¹¹¹⁵

I feel that all teacher aides should be on a higher level of pay within special schools and that would give the school extra funds to assist the aides to take on more professional learning.¹¹¹⁶

1109 See e.g. <www.seeklearning.com.au/tafe/certificate-3-education-support.asp?CampaignCode=LRN:SEM:SEMG41&s_kwcid=TC|1026387|teachers%20aide%20certificate||S|b|10386976684&gclid=CNy-2ZitibECFSdNpgodTEOwSA> at 8 July 2012.

1110 Case study 11.

1111 Submission 2, Julie Phillips, Disability Advocate, 3.

1112 HASD 1, 3, 4, 5, 8, 12.

1113 Educator survey participant.

1114 Educator survey participant.

1115 Integration aide, government mainstream school. Educator survey participant.

1116 Integration aide, government specialist school. Educator survey participant.

Some schools have introduced significant professional development opportunities for integration aides. For example, in at least one region, all integration aides have access to video conferencing to network with aides in other schools, as well as a minimum of two hours professional development each term. However, despite these good initiatives, many aides who took part in our survey felt opportunities were limited and the provision of professional development was inconsistent across the state:

As an Aide, I took it upon myself to fund my own training – Certificate of Education (Integration Aide). I have done some Professional Development since but one school did not support training at all and supplied none ...¹¹¹⁷

I have had some personal development opportunities in my years as an Aide. I feel that support staff should have more opportunities to educate themselves. My initial training was having my own child with autism.¹¹¹⁸

I have only been allowed to attend one training session on autism spectrum disorders and was then told not to expect any other training for the remainder of the year ... However the school is quite willing to spend a large quantity of the budget on Teaching staff to gain knowledge in other fields while ESOs are struggling to gain enough support and knowledge in supporting (all too often) the most difficult children in the classrooms.¹¹¹⁹

All ES PD is at the grace of the school principal and the time availability and funding of the school budget. Access to training for ES is also based on the employment contract time fraction of individual staff and the ES staff's willingness to give up time voluntarily to gain knowledge directly related to their job ...¹¹²⁰

Overall, the combined responses from both parents and educators indicate that the role of integration aides, including their remuneration, qualifications and status in the school, needs urgent attention given the crucial role they play in supporting teachers and students with disabilities in Victorian schools.

1117 Integration aide, government specialist school. Educator survey participant.

1118 Integration aide, government mainstream school. Educator survey participant.

1119 Integration aide, government mainstream school. Educator survey participant.

1120 Integration aide, government specialist school. Educator survey participant.

Equipping educators before they enter the classroom

Quality teaching is the single greatest in-school influence on student engagement and achievement.¹¹²¹

To work effectively with students with disabilities, educators need to understand disability in all its forms. They also need to know the practice techniques necessary to implement reasonable adjustments through changes to teaching styles, methods and equipment. They need to know this both in theory and in practice, before they enter a school.

However, current teacher education models indicate that there are no clearly defined standard approaches for pre- or post-service training to equip teachers to effectively accommodate the learning needs of students with additional health and development needs.¹¹²²

As part of the research, the Commission contacted all the Victorian universities that provide undergraduate teacher training courses. We asked them if the curriculum contained:

- core or elective subjects on educating students with disabilities and, if so, how much time in each of these subjects is allocated to instructing undergraduates about educating students with disabilities
- core or elective subjects on disability awareness, and/or awareness of specific forms of disability, and if so how much time in each of those subjects is allocated to educating students about disability generally, and or specific forms of disability
- core or elective subjects that include teaching students about their legal obligations as educators under the Disability Discrimination Act, the Standards or the Equal Opportunity Act.

1121 Australian Government, *Strategies to Support the Education of Students with Disabilities in Australian Schools; Report to Minister Peter Garrett AM MP*, Minister for School Education, from the students with disabilities working group, 15 December 2010, 8.

1122 Catholic Education Commission Victoria and Commonwealth, above n 17, 3.

Ten universities responded. They provided information about over 50 courses that can lead to registration as a teacher.¹¹²³

Based on the information that universities were able to provide, there appears to be considerable variation between courses in the time devoted to teaching about disability within core subjects. Estimates provided by universities ranged from three hours within a 'professional contexts' subject, to a 33 hour 'additional needs' subject.¹¹²⁴ It is also important to note that two universities indicated that inclusion and diversity was embedded within all core units of the course.¹¹²⁵

Most of the universities indicated that some content about disability awareness and teaching students with disabilities was included in elective subjects. In addition, there was usually potential for students to pursue an interest in disability through optional specialisations, electives or placements. This means that some students may complete their degrees having spent significant time considering issues related to the teaching of students with disabilities. On the other hand, some teachers may have completed their qualifications with little more than a few hours that touch on disability.

This suggests that there will be a wide variation among graduate teachers in their awareness of disability and their engagement with ideas and practices around educating students with disabilities.

I am a student teacher who has just completed my 4 year Bachelor of Primary Education. I have not had any specific training on disabilities, just on how to differentiate lessons for varying abilities. More specific training is needed for specific disabilities.¹¹²⁶

Completed university in 2010 and only had one core subject relating to working with students with a disability. Accessed a dyslexia PD through my own research.¹¹²⁷

1123 Universities were asked to respond within a tight deadline, so may not have been able to provide detailed information, such as the number of hours spent focusing on disability within general courses.

1124 University of Melbourne Masters of Teaching (Secondary) – estimated one-hour lecture and two-hour workshop. Homes Glen Institute Bachelor or Early Childhood Education estimated 33 hours within a core subject, with additional time in related subjects. Some universities were unable to provide estimates of the hours spent focusing on disability within particular subjects, due to the time frames for response.

1125 Responses from Deakin University and Monash University.

1126 Educator survey participant.

1127 Classroom teacher, government mainstream school. Educator survey participant.

Figure 16: Disability awareness education in teacher training curriculum in Victorian universities (excludes specialist education specialisations/degrees)

- – Full subject taught
- ▲ – Lectures and/or themes within a broader subject
- ✘ – Not taught

University	Subject on educating students with disabilities	Subject on disability awareness	Subject includes anti-discrimination legal obligations
University of Melbourne	▲ Core (Primary)	▲ Core	▲
Deakin University	▲ Core ● Elective (Primary) ▲ Elective (Secondary)	▲ Core	▲
Monash University	▲ Core and elective	▲ Core and elective	▲
Holmesglen Institute	● Core	● Core	✘
Australian Catholic University	▲ Core	▲ Core	▲
University of Ballarat	● Core	● Core	▲
RMIT	▲ Core	▲ Core	▲
La Trobe University	▲ Core ¹¹²⁸	▲ Core ¹¹²⁹	▲ ¹¹³⁰
Tabor College	✘	✘	✘
Victoria University	▲ Core ● Elective	▲ Elective	▲

Ongoing professional development for educators

When asked what sort of professional development they had completed to improve the education and support they provide to students with disabilities, a number of educators reported that they had had no professional development at all.¹¹³¹ Others reported a wide range of activities, from a few hours of training to postgraduate courses.

Examples included:

- in-school or DEECD-provided courses and seminars
- external professional development opportunities relating to a range of disabilities, including autism spectrum disorder, AUSLAN and integration studies
- advice from speech therapists, occupational therapists, social workers and other professionals
- reading and advice from parents and those who support students with disabilities
- vocational qualifications (Certificate IV)¹¹³²
- postgraduate special education qualifications, both self-funded and as part of DEECD scholarships.

¹¹²⁸ Subject yet to begin.

¹¹²⁹ Subject yet to begin.

¹¹³⁰ Subject yet to begin.

¹¹³¹ Educator survey participant.

¹¹³² It was noted that for qualified teachers there is a financial disincentive to undertake a Certificate IV integration aide course because you are required to pay fees because you already have a higher qualification. HASD 8.

Self-funded professional development

Some educators reported that they had received support from their school to undertake additional professional development. However, quite a few said they had self-funded further study:

I have undertaken my Masters of Education (special ed) but this was not endorsed or practically supported by my school. My school supports attendance at PD days etc but I have found useful and practical training and support to be inadequate in terms of specific and clear information from DEECD about what is required of a special education teacher.¹¹³³

[I] work with many staff members who have no training in this area and if requested to complete professional development refuse to do so. Whilst I have completed much training in the area of the years, it has rarely been through the school I work for.¹¹³⁴

Plenty of PD from external sources, not the school. This has required me to take at least 10 days off this year and out of the classroom. I have also attended out of hours PD. There is little support from leadership and I must learn to manage the parents, student, specialists etc without any support.¹¹³⁵

Funded professional development activities

Responses to our survey revealed a wide range of professional development opportunities available to educators, ranging from general disability awareness training to more targeted interventions, including support from specialist organisations. Several educators reported partnership arrangements with other schools and the regional DEECD office or, in the case of Catholic schools, the relevant education office in each diocese. Independent schools also have access to a program of seminars provided by Independent Schools Victoria.¹¹³⁶

1133 Educator survey participant.

1134 Integration aide, Independent school. Educator survey participant.

1135 Classroom teacher, government mainstream school. Educator survey participant.

1136 See <<http://www.independentschools.vic.edu.au/schools/seminars/calendar/index.shtml>> at 8 July 2012. The Commission notes that when entering the keyword 'disability' to search for a course in the current calendar, the only course that is found is one for gifted students. A search on the word 'discrimination' generates no results.

A significant number of educators reported relying on specialist support providers, such as occupational therapists and speech therapists, as a key source of knowledge and support for their teaching. In addition, peer support from other teachers and professionals was a strong theme in the survey responses.¹¹³⁷ In-school and off-site courses were also common ways in which educators developed additional understanding and skills for the classroom:

There have been PD sessions centred on particular disabilities. There is a disability and impairment liaison person. We have access to and occasional visits from district support staff.¹¹³⁸

Staff have had access to network meetings, approved training through professional development and support of a special needs coordinator.¹¹³⁹

PD sessions, meetings and discussions with Educational Psychologist about particular students with disabilities in my classes, with strategies given by the psych, information from visiting teachers who provide strategies in relation to students with specific disabilities.¹¹⁴⁰

Support through our regional initiative of autism coaches. A brilliant initiative where a coach is in place across the region – role is to support classroom teachers and administration with the development of strategies to support ASD students in the classroom.¹¹⁴¹

Some parents were concerned, however, that schools were not aware of the range of professional support available to them.

The DEECD has autism experts working in the Student Wellbeing Department. Unfortunately, these experts are not 'advertised' to teachers or principals at schools (my school was not aware of these people). There were times (when my son first started school) that this Department's support would have been greatly appreciated and made his transition to school a whole lot easier for my son, myself and his teachers. I think all schools that receive funding for a child with a disability should be made aware of the assistance that the education departments can provide.¹¹⁴²

1137 Educator survey participant.

1138 Classroom teacher, government mainstream school. Educator survey participant.

1139 Principal, Catholic school. Educator survey participant.

1140 Classroom teacher, government mainstream school. Educator survey participant.

1141 School principal, government mainstream school. Educator survey participant.

1142 Parent of student attending a government mainstream school. Parent survey participant.

Other parents suggested that a simple solution might be to establish a funding pool that can be used to train and support teachers when a student with disability enters their class:

Straightaway, if a child enrolls with a disability, it would be a good idea if \$5,000 could be made available to train the teachers regarding this disability.¹¹⁴³

Best practice: whole-of-school learning

In reality you get the best outcomes when the whole staff learn together.¹¹⁴⁴

A number of educators spoke of great gains being made through whole-of-school professional development around disability. This might involve bringing in external experts or building on existing knowledge in the school. The majority of educators with whom we spoke expressed a strong preference for establishing these whole-of-school approaches. As DEECD noted, 'critical mass is important':¹¹⁴⁵

We have also had whole school training in classroom behaviour management, restorative justice, understanding poverty. Our teachers plan for various abilities in the classroom, including students with special needs, and they use a variety of strategies to provide the best learning environment for all students. We have a hearing-impaired student and many staff have gone to signing classes to improve our communication with the student.¹¹⁴⁶

The internal structure that works best for providing information about disability is when they have in-school, in-service groups across different subjects (for example, a science teacher, an English teacher) in a small cluster meeting regularly. The information is given to the small group, who then goes away to discuss the issues they have. This is the best internal structure to bring these things forward. Then it becomes a united group of people that you can work with.¹¹⁴⁷

1143 HASD 13.

1144 HASD 3.

1145 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

1146 Principal, government mainstream school. Educator survey participant.

1147 HASD 5.

A teacher from a regional Catholic school told us that the diocese now requires that whole-of-school professional development be included in the school's strategic plan, for example learning about ASD.¹¹⁴⁸ This embeds the knowledge in the broader school system, rather than relying on a few teachers to carry the knowledge. Other positive whole-of-school initiatives were also reported in the survey and key informant interviews.¹¹⁴⁹

Barriers to professional development

An issue raised in discussions with educators was the difficulties around determining the most appropriate person to attend professional development opportunities:

[I have attended] many professional development short courses and seminars, especially in ASD. The issue is that the actual teachers of the students often do not attend these but the Special Needs Coordinator does. They report back but the teachers often will not take their advice or suggestions on board.¹¹⁵⁰

... Teaching staff should get the same training as aides. At my school the aides have more training in disability than the teachers. Both need to access the same information so we can work together effectively.¹¹⁵¹

Some educators explained that the pressure of competing demands on 'time-poor' teachers can lead to missed opportunities for professional development to really make a difference:

Major problem is getting time for PD and when you do go to training, etc. when you return to school the workload has mounted up whilst you have been absent.¹¹⁵²

1148 HASD 3.

1149 For example, in 2011 the Inclusion Support Program was trialled in six government mainstream schools. This supports students with autism spectrum disorder by providing '...teaching expertise, knowledge and facilities for them to participate as fully as possible in the school's curriculum'. Each school has an autism spectrum disorder coordinator who is a teacher with specific knowledge and expertise. They work with staff to ensure effective policies and procedures are implemented in the school, and support both teachers and students. See <<http://www.education.vic.gov.au/about/directions/autism/inclusion.htm>> at 13 July 2012. Independent Schools Victoria also reported that the Mansfield Statewide Services is completing a two-year trial of a program where their staff provide intensive support to another school. Professional development is provided to the whole of school staff over eight days. Key informant interview, Independent Schools Victoria.

1150 Specialist support provider, government mainstream school. Educator survey participant.

1151 Integration aide, government mainstream school. Educator survey participant.

1152 Specialist support provider, government mainstream school. Educator survey participant.

Geographic inequalities can also create barriers to accessing professional development:

We can access PD based upon student needs but these courses are often in metropolitan areas and we are three-and-a-half hours from Melbourne. Limited local PD. Very tight budgetary restraints within the school also limits the amount of support we get.¹¹⁵³

Others felt that, regardless of the leadership shown in the school around disability-related issues, some teachers do not take up professional development opportunities when they were offered. Further, some educators said they did not consider professional development around teaching a student with disability formed part of their brief.

Definitely not. I am trained as a Primary school teacher, NOT a special ed teacher. If I had wanted to teach disabled students, I would have trained as a special ed teacher!¹¹⁵⁴

Our school has arranged sessions to help teachers understand the needs of students with severe behaviour disorders. Teachers still need help with the management of students as some of the behaviours are unpredictable. Teachers are not well trained in understanding or dealing with disabilities. This field is a study in itself. Due to the demands of teaching, some teachers will revert to a position of teaching to the average student if the disability is challenging and there is not a full time support person for the child.¹¹⁵⁵

Frustration of entering the classroom ill-prepared

Some educators reported feeling inadequately prepared to teach and support students with disabilities, despite many years experience as a teacher:

No training just thrown in the deep end with four integration children in my composite 2/3/4, two with very different but severe autism and two with very low intellectual ability. Being an experienced teacher did not prepare me at all for these children.¹¹⁵⁶

I have had almost NO training or support. I am told very little about the students I teach, and this is not helped by confidentiality limits. I am not given any time to help me modify work for students. I am not given funding to pay for modifications needed. There are not enough support staff to provide support during classes, even for severely disabled students.¹¹⁵⁷

I have received little training. Training I have received is based on the scenario of having one student with a disability in a class. My class has one third of students with a disability of some kind. My teaching skills do not stretch to accommodate this.¹¹⁵⁸

Educators are keen for more opportunities

Staff need professional development in learning how to first demonstrate a 'will to include' and finally in knowing 'how to include' with the resources available.¹¹⁵⁹

Even though a lot of positive effort is being made, it was clear from our survey that educators still want more training and development:

I worked for 2.5 years with a community program providing services to adults with disabilities. I have now worked at a special school for 3.5 years. All of my learning has been 'on the job'. It would have been great to have better access to formal training.¹¹⁶⁰

Have sourced some training myself together with what the school can offer. More professional development days should be offered. More visits from consultants should be organised.¹¹⁶¹

We are, however, finding more students coming into schools with a multiplicity of disabilities and very little support is given to us to support these children in terms of learning how to manage the disability, access to information, finances to give these students aide support where applicable.¹¹⁶²

1153 Classroom teacher, government mainstream school. Educator survey participant.

1154 Classroom teacher, government mainstream school. Educator survey participant.

1155 Educator survey participant.

1156 Classroom teacher, government mainstream school. Educator survey participant.

1157 Classroom teacher, government mainstream school. Educator survey participant.

1158 Classroom teacher, government mainstream school. Educator survey participant.

1159 Case study 11.

1160 Integration aide, government specialist school. Educator survey participant.

1161 Integration aide, Catholic school. Educator survey participant.

1162 Specialist support provider, government mainstream school. Educator survey participant.

Each year our school provides some professional development on several areas of disability e.g. autism, language; however this is funded at a school level and not by the Education Department. A higher level of training is required in order for all teachers to feel supported.¹¹⁶³

Other educators noted that disability awareness in itself is not enough. Instead, it is the practice of teaching for individual needs and understanding the child that is key.¹¹⁶⁴

[I] have attended PD within the school external PD does not cater to the needs of my students. When I started I had no training in special ed, however training would not have prepared me anyway, learning on the go was a better way of learning, it catered to the needs of my students.¹¹⁶⁵

The importance of educators being willing to adjust their attitudes and their teaching methods was a common and important message:

Providing time may give staff a chance to understand the needs of these students but no amount of PD will influence the staff who are unwilling to make adjustments for the individual needs of these students. Staff with a willingness to learn, and the flexibility to adjust to the new challenges of teaching these special needs students create a positive learning environment.¹¹⁶⁶

The key is individual learning for that child, not just disability awareness.

Recent initiatives in professional development and support

DEECD, Catholic education offices and Independent Schools Victoria all offer a range of professional development opportunities for educators generally.¹¹⁶⁷

1163 School principal, government mainstream school. Educator survey participant.

1164 HASD 3.

1165 Classroom teacher, government mainstream school. Educator survey participant.

1166 Visiting teacher, government mainstream school. Educator survey participant.

1167 A list of professional development for government school teachers can be found at <<http://www.education.vic.gov.au/proflearning/teacher/default.htm>> at 10 July 2012. See also <<http://www.education.vic.gov.au/proflearning/ssso/default.htm>> at 10 July 2012 for details of professional development courses for integration aides in government schools.

More specific workforce development activities around disability are also available. In government schools, these include scholarships for postgraduate study in special education and professional development resources, including the *Language Support Program-Professional Learning Guide* and training resources to support the Abilities Based Learning and Support (ABLES) tool.¹¹⁶⁸ This is complemented by webinars, e-learning and face-to-face training on working with specific disabilities, such as autism spectrum disorder, as well as specialist training offered by the Victorian Deaf Institute.¹¹⁶⁹

The Commission welcomes the renewed emphasis on workforce development across all school systems and sectors that have been facilitated through national partnerships funding under the *More Support for Students with Disabilities* initiative. As noted by DEECD, this is an important opportunity to build on what is happening already to ensure:

... our teaching workforce has access to contemporary knowledge and evidence related to effective pedagogy for all students with learning disabilities, and that we have in place professional learning approaches that meet the needs of teachers while delivering positive and sustainable increases in our workforce capacity to meet the needs of this large group of students.¹¹⁷⁰

The Commission also notes that a working party will be established with the Catholic Education Commission Victoria and Independent Schools Victoria to identify opportunities for collaboration and achievement of shared goals across the three implementation plans.¹¹⁷¹ Participants in this research noted coordination and collaborations between the government and Catholic systems and the Independent school sector as a gap. While this was mostly talked about at a school-to-school level, the ongoing development of relationships between the leadership of these systems and sectors is most welcome.¹¹⁷²

1168 The Language Support Learning Program (LSLP) provides assistance to teachers to develop 'strong language competency' in children and young people. It is divided into five learning modules: The Language Support Program, language disorders and difficulties, identifying and profiling students with language difficulties, teaching strategies for students with language difficulties and implementing a language support program across the school. See <www.education.vic.gov.au/studentlearning/programs/lsp/default.htm> at 9 July 2012. For more information about ABLES see <<http://www.education.vic.gov.au/healthwellbeing/wellbeing/ables.htm>> at 9 July 2012.

1169 <www.education.vic.gov.au/about/directions/vdei/pl.htm#H2N101F7> at 10 July 2012.

1170 Victoria and Commonwealth, above n 23, 2.

1171 Ibid 3.

1172 HASD 5.

Government school professional development

In the government school system, activities funded under this initiative over the next two years include:

- assistive technology teacher training
- teacher collaboration, coaching and access to professional expertise and consultation on autism spectrum disorder, Down syndrome and deaf education¹¹⁷³
- professional learning and training courses, including an online learning program on learning difficulties and utilising the ABLES assessment and curriculum materials
- training of 1,300 school staff on the Disability Discrimination Act and Disability Standards for Education
- extension of the existing two-year scholarships for teachers in specialist schools to include scholarships on ASD and deaf education for teachers in mainstream schools¹¹⁷⁴
- support for school leadership to facilitate professional learning on 'effective and inclusive practices for students with learning difficulties and disabilities'¹¹⁷⁵
- development of resources and training around responding to challenging and extreme behaviour¹¹⁷⁶
- a trial of autism coaches in 15 mainstream schools across all DEECD regions¹¹⁷⁷ and complemented by website resources for all schools, including curriculum materials and other materials to assist the teaching of students with ASD.¹¹⁷⁸

1173 'Through linkages with key groups including autism Victoria, Down Syndrome Victoria and Victorian Deaf Education Institute.' Victoria and Commonwealth, above n 23, 6.

1174 Up to 95 scholarships are available with a number reserved for studies in the specialist areas of autism spectrum disorder and deaf education. The initiative will extend the number of autism spectrum disorder scholarships available by up to 40 in a new one year course being developed by the Autism Teaching Institute. The number of deaf scholarships has also been increased. DEECD also funds scholarships to undertake a Vocational Graduate Diploma in Autism Teaching and a new scholarship focusing on mental health and scholarships in positive behaviour and learning. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 9 August 2012.

1175 Victoria and Commonwealth, above n 23, 4–7.

1176 This initiative is being undertaken in partnership with the Principals' Association of Specialist Schools and relates to the use of restraint. It is discussed in more detail in Chapter 10.

1177 Victoria and Commonwealth, above n 23, 4–7

1178 This content is being developed by ASPECT.

Independent and Catholic school professional development under the initiative

The Catholic Education Commission's implementation plan includes:

- training on the use of assistive technology for teachers and learning support officers
- 50 teachers to be released from school for postgraduate learning.¹¹⁷⁹

These teachers will become lead teachers in schools to strengthen 'teacher knowledge of evidence-based interventions to establish effective inclusive classrooms in the early years'.¹¹⁸⁰ As a network, they will form a critical mass of expertise within the Catholic system.

The Independent school sector's implementation plan includes:

- collaborating with the International Centre for Enhancement of Learning Potential (ICELP) to establish 'the first authorised training centre in Australia for training teachers in Instrumental Enrichment',¹¹⁸¹ which will 'serve as a hub for expertise in the educational needs of students with disabilities and provide expert support to schools. Experienced trainers will provide training and ongoing support to teachers and schools'.¹¹⁸²
- training teachers on the Junior Great Books program¹¹⁸³
- delivering workshops on the two programs to school leadership, and intensive training courses and support on both learning programs, to teachers.¹¹⁸⁴

1179 Key informant interview, Catholic Education Office Melbourne.

1180 Victoria and Commonwealth, above n 23, 8–9, 12.

1181 The Instrumental Enrichment program was selected by Independent Schools Victoria due to "its proven effectiveness for students with a wide range of disabilities'. Independent Schools Victoria and Commonwealth, above n 18, 3.

1182 Ibid 5.

1183 This 'has been demonstrated to be particularly effective for children suffering from vision impairments, and from learning disabilities such as dyslexia'. Ibid 3.

1184 Independent Schools Victoria intends 'over the longer term, to offer training to all interested Victorian Independent schools, with a long term, aspirational goal of ensuring that at least two teachers in each of Victoria's 220 Independent school receive training in at least one, if not both, of the professional learning programs'. Ibid 4-6.

Opportunities for improvement

Victoria needs a workforce of educators who are better equipped to understand and meet the learning and support needs of all the students in their classrooms.

To achieve this, university courses for teaching qualifications need to include a stronger focus on teaching students with disabilities, across the full range of disabilities. Universities must not only teach the theory of educating students with disabilities, but also its practice in the classroom.

There was a strong consensus among participants in the research that pre-service and in-service teacher education and support must be increased so that teachers are better able to meet the needs of students with special needs.¹¹⁸⁵

Some participants made very specific recommendations regarding teacher training qualifications. For example, Autism Victoria (Amaze) recommended that:

- all teacher training courses provide a minimum of 120 hours teacher training in effective teaching of students with disabilities
- all teacher training students have a minimum of three weeks placement in a school identified as having best practice approaches to inclusive education
- to support the adoption of recommendations above, DEECD advise all teacher training institutions that preference for employment will be given to those students who have participated in and demonstrated compliance with the 120-hour and three-week placement conditions.¹¹⁸⁶

Quality ongoing professional learning for teachers and support staff is also vital. While much has been done through existing professional development initiatives, more is needed if educators are to effectively plan and make teaching adjustments that deliver an education experience free from discrimination for students with disabilities. Our research suggests that whole-of-school professional development, supplementing individual learning opportunities, is the best way to achieve this.

¹¹⁸⁵ See e.g. Submission 5, Occupational Therapy Australia, 4. This was also identified in the review of the *Disability Standards for Education 2005*, which found 'support for a review of pre-service teacher education to enhance graduate teacher understanding of the application of the Standards to early childhood and school settings. It was suggested this could include the introduction of a compulsory subject on inclusion of students with disability'. Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 6.

¹¹⁸⁶ Submission 10, Autism Victoria (trading as Amaze) 2.

Some people felt that there should be a learning support or special needs teacher in every school in Victoria.¹¹⁸⁷ The Commission notes that this model is now being rolled out in New South Wales using funds provided under the *More Support for Students with Disabilities* initiative. In that jurisdiction, resources for support services are being reorganised with the aim of ensuring a specialist teacher presence in every mainstream school.¹¹⁸⁸

Recommendations

Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that:

45. All undergraduate teacher courses provide a core subject dedicated to disability awareness, curriculum and pedagogy modifications to maximise participation by students with disability and legal obligations of teachers under anti-discrimination laws.
46. Building on existing leading practice, that all government schools be required to develop and implement a whole-of-school professional development program on disability awareness, inclusive education and use of individual learning plans as part of the Accountability and Improvement Framework for Victorian Government Schools. That all Catholic and Independent schools develop similar whole-of-school professional development programs.
47. The current roll-out of training to Victorian government schools regarding legal obligations under anti discrimination laws extend beyond the existing two-year funding commitment, and that this training specifically include making adjustments across the entire curriculum, including participation in camps, excursions and other extra education activities. That similar training also be provided to staff in Catholic and Independent schools by the appropriate body.

¹¹⁸⁷ See e.g. case study 9.

¹¹⁸⁸ In order to do this, New South Wales will merge various positions into one 'Learning and Support Teacher' position. There will be 1814 learning and support teachers and 96 assistant principals across the state. In addition, they will retain itinerant support teachers for early intervention, vision, hearing and transition, similar to Victoria's Visiting teachers. Government of NSW, above n 1085, 33–34.

Chapter 16: Leadership and accountability

Main findings

- The culture and resources of individual schools, as well as the skills and attitudes of the principal and teachers, are key factors in building a school community that is inclusive and supportive of students with disabilities.
- While school leaders, such as the principal, are important in building an inclusive culture, one or two champions are not enough. A 'critical mass' of support within the school is necessary to bring about sustained change.
- Ensuring that teachers have the training, information and support they need, as part of a whole-of-school approach to students with disabilities, is essential for strengthening teaching practice and improving educational outcomes for individual students.
- Many parents share a concern that accountability for delivering positive educational outcomes for students with disabilities rests at the school level. A number of recommendations were made to bolster external monitoring and review mechanisms to audit the performance of schools against identified benchmarks.

Leadership in schools

The importance of leadership in schools was a major theme that emerged through the Commission's research. Parents and educators gave examples of positive and negative experiences and stressed that strong and consistent leadership at a school is crucial to ensuring students with disabilities are welcomed and can fully participate:

The school has been very supportive ... they've used PSD funds to build ramps etc ... the teachers are aware of disability and modify sport and excursions. Trust is the key ingredient. The Principal and Deputy are both fantastic.¹¹⁸⁹

The culture of the school is about respect and acceptance and this is reinforced from the top down.¹¹⁹⁰

If the principal is not interested, the child has no chance.¹¹⁹¹

You can have all the funding in the world but without good training and leadership, it is useless.¹¹⁹²

Some educators responding to the survey who had taught in a range of schools noted that some schools are highly organised and show good leadership, while others adopt a 'slapdash' approach to meetings and have no understanding of their obligations.¹¹⁹³

Our research confirms that, while a lot of very positive work is taking place in many schools in Victoria, the experiences of students with disabilities are inconsistent across the state. This suggests that what makes a fundamental difference for students with disabilities is the individual school, its culture and resources, as well as the skills and attitudes of the staff from the principal down.

1189 Phone-in 8. See also phone-in 1, 2, 7 and 28.

1190 Parent of a student attending a government mainstream school. Parent survey participant.

1191 Parent of student attending a government mainstream school. Parent survey participant.

1192 HASD 6.

1193 Educator survey participant.

The principal makes a difference

Our research revealed a strong consensus about the important role the school principal plays in cultivating a culture of inclusion and acceptance at the school.¹¹⁹⁴ When asked how to duplicate the success of a particular school, one parent simply answered by saying 'clone the principal':¹¹⁹⁵

We are lucky – our principal is great. He knows all the kids by name. It amazes me how the principal knows the kids. I admire his leadership and the repertoire of skills he has developed.¹¹⁹⁶

It comes down to the principal and the priorities. You will see a school with six assistants and you wonder, what is it they're doing? It's nothing to do with funding; it's about priorities and leadership.¹¹⁹⁷

He is a messy eater, one teacher suggested he sit away from the other students, but the principal said no – will work around including him. This was great.¹¹⁹⁸

Others, however, had a less positive experience:

The view of the principal was that to meet the needs of my son would mean treating him differently to other children and then mean that he was privileged and the principal did not want this to happen.¹¹⁹⁹

Some parents also felt the school leadership was closed to any feedback, despite the good efforts of individual teachers:

The teacher levels at the school are brilliant, but the heads of the departments and assistant principals are completely oblivious to the students' needs and are more concerned about keeping their own positions. The school is too 'top heavy' and needs a serious change of management. There is no one to go to within the school if you have a problem, as they all have each other's back.¹²⁰⁰

A number of parents also noted that when the school principal changed, their experience and that of their child changed dramatically:

When the new principal started, my son's behaviour quickly deteriorated. He was self harming, harming others, angry, depressed. His teacher was angry – she told me that the principal refused to make allowances as 'these kids are here to integrate so they will integrate'. His aide told me that the principal told her that 'people won't enrol their children here with so many integration kids'. At the end of the year most of the aides were either let go or resigned and a number of teachers also left. I believe it was her agenda to 'get rid' of the integration kids...¹²⁰¹

Initially, life at primary school was difficult, but with a new principal and teacher and aide, he has thrived. Next year he is off to a specialist school. I believe that being at the small country school has given him a great start to his learning.¹²⁰²

Teacher attitudes

Whether the needs of some students are addressed depends on the availability of willing and interested staff to advocate for the student.¹²⁰³

Our research revealed gaps in knowledge about the needs of students with disabilities and varying levels of commitment to meeting those needs. This inconsistency in attitudes, which leads to inconsistency in the treatment of students and in their educational outcomes, was one of the strongest messages shared by students, parents and educators alike.

1194 The Commission notes and welcomes the inclusion of additional school leadership support in the DEECD and Catholic Education Commission Victoria (CECV) implementation plans for the *More Support for Students with Disabilities Initiative*. These are discussed in Chapter 15.

1195 HASD 14.

1196 HASD 9.

1197 HASD 6.

1198 Phone-in 48.

1199 Case study 38.

1200 Parent of student attending a government specialist school. Parent survey participant.

1201 Parent survey participant.

1202 Parent of student attending a government mainstream school. Parent survey participant.

1203 Visiting teacher of the deaf, government mainstream school. Educator survey participant.

We were given many positive examples of educators taking extra effort to address the needs of students with disabilities in spite of funding or other constraints.¹²⁰⁴

Generally the teachers are good, especially the young ones. I feel that they do want to make a difference.¹²⁰⁵

The school environment is warm and the general attitude of kids to teachers is inclusive and positive. I hope my child continues to feel supported, liked and included in the family-like environment.¹²⁰⁶

Our research found that a lack of support, training and information can lead to negative attitudes among some staff, resulting in some students not getting the support they need or staff 'giving up' on them.

However, other responses, including those from educators, indicated that some staff can be unsupportive and feel that it is not their responsibility to address the needs of students with disabilities, even if training and support is available to them:

Some staff feel students should not be there.¹²⁰⁷

Some teachers seem annoyed by the additional work it takes to cater for these children.¹²⁰⁸

A lot of staff think 'That's welfare, that's not my role'.¹²⁰⁹

Parents also spoke about the negative attitudes among some educators, including reluctance from some to admit they need training, a lack of interest in better understanding the needs of their students or not knowing about or making the most of existing resources at the school:

One of his teachers said to me, 'You don't think he will ever be capable of going to TAFE do you?' This is despite positive feedback from private tutors. If teachers give up on kids this early, what message does it send?¹²¹⁰

The majority of staff do not know how to use existing assistive technology in their school and many had an attitude that they have no special needs training, they don't know what to do so they just don't do anything.¹²¹¹

1204 See e.g. phone-in 2, 9 and 14.

1205 Phone-in 28.

1206 Parent of student attending a government mainstream school. Parent survey participant.

1207 Educator survey participant.

1208 Specialist support provider, government mainstream school. Educator survey participant.

1209 HASD 5.

1210 Parent of student attending a mainstream government mainstream school. Parent survey participant.

1211 Parent of student attending a government mainstream school. Parent survey participant.

Educators need support

We need an incentive program that lifts the profile of special needs teachers ... Financial incentives, public recognition of good teachers and visible appreciation ... We need to change the culture to appreciate what people do.¹²¹²

A lack of support for teachers – such as ensuring information is conveyed across the school about how to support children with disabilities and what management systems are in place – also appears to lead to frustration or a lack of commitment among staff. As one educator responding to the survey indicated:

Staff are expected to jump through hoops with no support or time release ... the hoops are too high and they're not being leapt through.¹²¹³

Some parents said they had positive experiences with teachers who made extra effort but that these efforts sometimes could not be sustained due to a lack of recognition and support from the school. For example, one parent spoke of a particular teacher who attended a professional development session about Down syndrome but the teacher was unable to show more than an 'initial blush of enthusiasm'.¹²¹⁴

Another parent identified a similar experience, saying they had worked positively with the teacher to identify opportunities for extra training but that these had not been supported by the school.¹²¹⁵

A number of educators made comments about poor planning and organisation, and a lack of effective management strategies being responsible for failures to address the needs of students with disabilities. Specific comments in the survey included:

There is a lack of coherent follow through between management and staff.¹²¹⁶

[there is] poor management of funds and poor leadership from the person in charge of the disability program.¹²¹⁷

1212 HASD 15.

1213 Classroom teacher, Independent school. Educator survey participant.

1214 Parent survey participant.

1215 Parent survey participant.

1216 Classroom teacher, government specialist school. Educator survey participant.

1217 Classroom teacher, government mainstream school. Educator survey participant.

Other comments suggest that for some teachers, at least, responsibility for inclusion rests primarily with specialist staff such as special needs coordinators. While these positions do have particular responsibility, under federal and Victorian laws all educators have legal obligations to eliminate discrimination in the provision of education to students with disabilities.

Implementation of policy, guidance and support by schools is inconsistent

A number of parents and organisations stressed that, despite a plethora of departmental policies and guidance, change is not happening on the ground. This is causing significant frustration.

What is clear is that the Department of Education and Early Childhood Development (DEECD) is investing heavily in developing materials, supports and guidance for schools around disability and education and that the department has the expectation that schools will follow this. What is less than clear however is that this actually happens in all schools, and that this information and guidance is applied for every student who could benefit from it.

One submission claimed that the majority of teachers are unlikely to have heard of the manuals developed by the department to support the teaching of students with disabilities.¹²¹⁸ Others felt the DEECD policy and guidance itself was not strong enough:

The DEECD disabilities guidelines seem to be worded to promote maximum flexibility in arrangements made between individual schools and children. What actually ends up happening is that without clear directives, schools seem to feel free to ignore these rather vague suggestions. In our case, all the staff seem massively ignorant about autism and current intervention techniques, but they don't know how little they know ... so they really come across as arrogant, and no-one seems to have the authority to compel them to improve their performance.¹²¹⁹

A number of parents were also concerned that their school did not know about key resources and supports that were available to them through DEECD. A parent survey respondent said:

The DEECD have autism experts working in the Student Wellbeing Department. Unfortunately these experts are not 'advertised' to teachers or principals at schools.

1218 Submission 2, Julie Phillips, Disability Advocate, 5.

1219 Parent of student attending a government school. Parent survey participant.

Beyond champions to critical mass

Once the culture is embedded, a diverse school becomes an attraction to all parents, not just parents of kids with disability. It shows all kids that disability is not invisible. We need a critical mass.¹²²⁰

Many people told us that developing a positive, inclusive culture in a school requires more than one or two champions in the school if the gains are to be sustainable. Therefore, while the role of school leaders is important, it is 'critical mass' that really shifts attitudes and practice.¹²²¹

To achieve this, schools need resources, support and guidance. However, they must also be accountable to DEECD or, in the case of the Catholic system, each diocese education office. As noted by Vision Australia:

Educational institutions must be diligent in allocating generic and disability specific funds appropriately to cater for individual needs. Policies and procedures must also promote the sustainable capability of inclusive education practices, through enabling staff skills training, the upgrade and maintenance of physical access to spaces and buildings, the investment of technological and pedagogic support measures, and to foster ongoing systemic cultural and attitudinal change towards full inclusion.¹²²²

Getting it right – it does happen, it just needs to happen more often

Our survey of educators asked them to discuss best practice approaches to supporting and educating students with disabilities. Responses to this question included broader comments about attitudes, priorities and cultural change, along with specific examples of what works when supporting the needs of students with disabilities.

Respondents made comments about optimising existing methods and structures to improve the educational experience of students with disabilities. These responses were similar to suggestions educators made about opportunities for improvement in other parts of the survey, as well as suggestions from both parents and educators about what would help students with disabilities to participate.¹²²³

1220 HASD 1.

1221 See e.g. HASD 1, 9, 13 and 14.

1222 Submission 9, Vision Australia, supplementary materials 16.

1223 See Chapter 4.

These included:

- regular, effective use of student support groups to facilitate clear and consistent communication between parents and the school on how to address individual students' needs
- adapting programs and curriculum to meet the students' specific needs
- using available learning resources, adjustments, aides, visual cues and technology and providing information in accessible formats

Some educators also recognised the positive, proactive approaches by dedicated staff, in spite of budget, resourcing, or other constraints, as examples of best practice. As one educator noted:

In my opinion, the main obstacle to best practice is lack of funding and exclusion of needy children from the disability program. The best practice normally comes from staff who are dedicated to these kids and have their best interests at heart and work within and outside the system to try and make the education experience a positive one for them.¹²²⁴

Strategies to address bullying and harassment against students with disabilities are also crucial in building inclusive school communities and supporting students to achieve positive educational outcomes. Almost two-thirds of students and parents who responded to our survey reported that they or their child had been bullied at school, with Indigenous students and students from culturally and linguistically diverse backgrounds being particularly vulnerable.¹²²⁵

While bullying has negative emotional, educational and physical effects on all students, international research indicates the impact on students with disabilities is even more profound.¹²²⁶ As part of our study, educators provided information on an impressive range of anti-bullying programs taking place across Victoria, which were supported by the whole school community. What was less clear, however, was the implementation of specific strategies and actions to prevent bullying based on disability.

¹²²⁴ Integration aide, government mainstream school. Educator survey participant.

¹²²⁵ See Chapter 7.

¹²²⁶ Young, Nieman and Gelser, above n 410, 1.

A commitment to including students with disabilities and supporting them to achieve their potential has an enormous impact on the school, on the community and on the child's future life:

This school saved his life. It is a mainstream school but it caters for students that don't tick the box for regular schools. He has been there since year seven and he was grounded and refocused and his self esteem improved. The staff are wonderful. They nurtured his strengths. He is now able to do work experience, worked and his book of poetry is being published this year.¹²²⁷

Leadership by the department

Where is the leadership for the leadership? Who sets targets for principals on students with disabilities? Who makes it a priority for schools ...?¹²²⁸

Accountability in Victorian government schools

The Commission's study has found that while many schools are doing a good job of providing an accessible and quality education for students with disabilities, others are not. This inconsistency must be addressed if discrimination on the basis of disability is to end.

For many who took part in our research, a fundamental concern was that virtually all accountability for progress towards this goal rested at the school level.¹²²⁹

Similar to other states and territories, Victoria operates under a devolved structure that maximises local decision making by schools.¹²³⁰ This approach 'emphasises that principals and school communities are best placed to drive improvement, as they understand their schools within the context of their local area'.¹²³¹

¹²²⁷ Phone-in 51.

¹²²⁸ HASD 9.

¹²²⁹ See e.g. submission 4, Emmy Elbaum, Parent Advocate, 3–4.

¹²³⁰ Devolution is the granting of power from a central body (usually a federal or state government) to a subsidiary body such as a local, department, executive authority or school. In education, devolution is also known as school/site-based decision making/management, school/site-based autonomy, self-managing schools, autonomy for local schools and decentralised/site-based management. See Australian Education Union, *Devolution and Education* (2012) 2.

¹²³¹ Hon Martin Dixon MP, Minister for Education 'Victoria as a Learning Community' (Speech delivered at the Melbourne Graduate School of Education, Melbourne, 29 November 2011).

The Accountability and Improvement Framework for Victorian Government Schools

Under this policy, the school council is the governing body and 'school leaders are the key drivers in promoting change and building the collaborative relationships and accountability necessary for improving student outcomes'.¹²³²

The policy sets out the planning and evaluation framework that all government schools must implement in their individual settings. It is based on an 'effective schools model' that includes eight domains, including accountability, professional leadership and high expectations of all learners. It also sets out the process for a four-year cycle of evaluation, review and planning, as well as an annual cycle of implementation and reporting.¹²³³

Under the *Accountability and Improvement Framework*, each school must have a strategic plan, which includes goals and targets for the school to measure its achievements against. Each school must have an annual plan. Underneath this sits the principal's performance and development plan and individual performance development plans for school staff.¹²³⁴

Reviews of schools take place under the *Accountability and Improvement Framework*. Self-reviews are undertaken at a school level, and include independent reviewers and 'critical friends' from the community to assist with assessing the school's goals and performance in three areas: student learning, engagement and wellbeing, and pathways and transitions.¹²³⁵ In some schools, reviews are undertaken by the DEECD regional office. This reflects a graduated approach to the level of review necessary to meet the needs of the school.

Departmental policy states that 'independent reviewers and critical friends are selected based on their educational expertise and trained to ensure they are familiar with the department's current policies, frameworks and priorities'.¹²³⁶ It then identifies the range of people who could act as critical friends as including:

- 'another principal or senior educator from Victoria, interstate or overseas
- a consultant from education, organisational health, leadership, financial management, etc
- academics and/or researchers
- staff members from relevant areas of the department or its statutory authorities'.¹²³⁷

No mention is made of including those with specialist knowledge of disability or disability advocates; however, the list in the guidelines is not intended to be exhaustive. However, the Commission understands that the reviewers, as part of their contract must attend annual training.¹²³⁸

Reporting to the department

Each school principal is required to submit school performance reports to DEECD. This includes data gathered from annual surveys to parents, students and staff, as well as assessment results (School Level Reports).¹²³⁹ The schools census also includes specific data on the Program for Students with Disabilities (PSD).¹²⁴⁰

DEECD also provides schools with a School Compliance Checklist, a 'one-stop' online self-assessment tool designed to assist them manage and monitor their compliance with legislation and department policy and to streamline and consolidate reporting requirements.¹²⁴¹

1236 Ibid.

1237 Ibid 10.

1238 'The Disability and Additional Needs directorate provides a session at this training. Some of the reviewers have a background in disability, e.g. as a principal of a specialist school'. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 9 August 2012.

1239 The parent survey includes, among other things a number of questions regarding consultation with parents, encouraging children to learn, the suitability of education programs and the quality of transitions. There is one question regarding the quality of therapy services. There are no questions specific to students with disabilities; however, there is a question regarding the student's program support group, which may be a proxy for a student support group.

1240 Principals are required to report on the number of PSD students at their school, how many do not have an individual learning plan and the percentage of students the principal considers are meeting goals within these plans.

1241 <<http://www.education.vic.gov.au/management/schoolimprovement/checklist.htm>> at 10 July 2012.

1232 State of Victoria, Department of Education and Early Childhood Development, *Accountability and Improvement Framework for Victorian Government Schools 2012* (2012) 4. <www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/aifguidelines3.pdf> at 31 July 2012.

1233 Ibid 5–6.

1234 Ibid 7–8.

1235 State of Victoria, Department of Education and Early Childhood Development, *School Review Guidelines* (2012) 4. <www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/srguidelines4.pdf> at 31 July 2012.

Publication of school results to the community

Every government school is required to publish an annual report and make this available to parents. Government schools with more than 10 students eligible for PSD funding must report on progress of these students on their annual report to the community.¹²⁴²

In addition, a Government School Performance Summary for each school is published on the website of the Victorian Qualifications and Curriculum Authority (VRQA).

This performance summary provides aggregate student results and information about how the school compares with other government schools, taking into account its student intake. Each school also provides a 'What Our School Is Doing' statement, 'which provides context for the data contained in each school's performance summary and outlines the school's achievements and plans for the future'.¹²⁴³

This summary does not necessarily contain any information about how well students with disabilities are doing at the school or what efforts the school is making to ensure compliance with the *Disability Standards for Education 2005* (the Standards).

Inspections to maintain registration as a school

All schools must currently be reviewed for compliance with minimum standards, including compliance with federal and state laws, at least once every five years. Responsibility for conducting these reviews rests with the VRQA, which has the role of providing regulation that ensures quality education.

Under the *Education and Training Reform Act 2006*, the VRQA has a formal arrangement with DEECD to review the operation of government schools. As part of this arrangement, DEECD 'undertakes a regular cycle of school reviews and reports annually to the VRQA on the compliance of all Victorian government schools with the minimum standards for registration'.¹²⁴⁴ Similar arrangements are in place with the Catholic Education Commission of Victoria (CECV). Independent schools are reviewed directly by the VRQA.

The Commission was unable to confirm whether these reviews check that policy and guidance on educating students with disabilities is being followed; however, the Student Wellbeing and

1242 State of Victoria, Department of Education and Early Childhood Development, Guidelines for the 2011 Annual Report to the School Community 2012 (2012) 5.

1243 <<http://www.education.vic.gov.au/aboutschool/schoolreports/default.htm>> at 10 July 2012.

1244 <<http://www.vrqa.vic.gov.au>> at 10 July 2012.

Engagement Division of DEECD does provide advice to inform the review process in government schools.¹²⁴⁵

Local decision making and accountability for outcomes for students with disabilities

schools appear to be 'siloed' in that they are a world unto themselves. They are also self-monitoring, and I would like to see more external monitoring of schools by education people.¹²⁴⁸

Internationally there are significant differences in how devolution operates but 'there is general consensus among advocates of such initiatives that they will improve school effectiveness and student learning outcomes by producing better educational decision making; improving school management and leadership; improving quality of teaching; leading to a more responsive curriculum; and producing more efficient use of resources'.¹²⁴⁷

The Commission recognises the advantages of local decision making by schools. However, it does create challenges when system-wide change is needed to ensure the full inclusion of students with disabilities, especially in a climate of limited resources and competing demands. Localised accountability is also more challenging when so much rests on the quality of educators who are not always trained in the pedagogic and practice changes necessary to teach to the full range of disabilities that may be present in a classroom.

For example, in Victoria there is a heavy reliance on individual learning plans (ILPs) to identify goals for the student and to track their progress towards these goals. Currently, the execution and evaluation of these plans rests solely in the hands of the school; there is no review for compliance by peers, the region or DEECD. This would not be a problem if every student who should have an ILP did have one and if the quality of the ILP was consistent across schools. However, our research and that the Victorian Auditor-General, has found that this is not always the case.¹²⁴⁸

1245 Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 9 August 2012.

1246 Parent survey participant.

1247 Australian Education Union, above n 1230, 2.

1248 142 parents whose child received Program for Students with Disabilities reported that an individual learning plan was in place (75.5 per cent). Thirty-one parents reported no plan was in place. Fifteen parents did not know. For an analysis of ILPs see Victorian Auditor-General's Office, 'Programs for Students with Special Learning Needs', above n 73, 26-27.

Similarly, while there are financial audits of funding delivered under the PSD, there does not appear to be an accountability mechanism in place to ensure that this funding is being used to deliver appropriate adjustments for students with disabilities and, therefore, support the delivery of educational outcomes. As noted by the Victorian Auditor-General in 2007, the individualised and devolved characteristics of the program 'present a series of difficult challenges to develop appropriate central, or whole-of-program, accountability mechanisms, capable of reliably informing Parliament, and the community, on the aggregate effectiveness of the PSD'.¹²⁴⁹

Now, some five years later, the program still does not have any published key performance indicators and the only tool to assess accountability for outcomes under the PSD remains the ILP, with all the limitations described above.

For those students with disabilities who are not eligible for PSD funding, the Commission was unable to identify any specific accountability measures that schools must report on to the region or DEECD, beyond financial controls.

Further, DEECD does not know how many students with disabilities have been suspended or expelled from schools.¹²⁵⁰ It has no way of measuring how many schools have active student support groups in place, as required under departmental policy.¹²⁵¹ All this information is held at a school level and is not published at an aggregate level for the region or the state.

Opportunities for improvement

The *Review of Disability Standards for Education 2005* found that nationally 'The obligations and requirements under the Standards are not backed up by strong accountability frameworks'.¹²⁵² Within this context, and given the variance in experiences of students with disabilities between schools revealed in this research, it is unsurprising that a number of parents and educators made suggestions about how accountability might be improved. Some of them called for fundamental reform, including legislative, policy and structural changes.

It is foolish to think that an inclusive policy can be implemented within the existing current education system with minor changes. As inclusion is not simply an add-on to the current operations of a school or an educational system, significant restructuring and re-culturing processes are needed in the area of how teachers do their work, how the Department meets policy objectives and what would it take to be truly inclusive.¹²⁵³

This parent called for reasonable adjustments to be entrenched as a right under an 'Inclusive Education Act'.¹²⁵⁴ Others thought greater clarity around the existing law, including the Standards was needed.

I feel until there is the development of compulsory minimum standards with 'best practice' models explaining how the DDA [*Disability Discrimination Act 1992*] standards should work and be put in place, most schools will continue failing to understand how to comply with high level disability standards. There needs to be real, practical clarity around what indeed reasonable adjustments may be; and positive duty – working examples and templates should be developed. There should be compulsory training for staff – not discretionary as is now. ILPs should be a legal requirement. Funding criteria should be broadened and process improved. Principals should have to account for how any disability funding is spent – currently unaccounted for taxpayer money. This is a whole area requiring desperate scrutiny and review.¹²⁵⁵

1249 Victorian Auditor-General, above n 1077, 3.

1250 Key informant interview, Student Wellbeing and Engagement Division, DEECD. Nor is this information collected or reported on in the Catholic system or Independent school sector. Key informant interview Catholic Education Office Melbourne; key informant interview Independent Schools Victoria.

1251 Key informant interview, Student Wellbeing and Engagement Division, DEECD.

1252 Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, viii.

1253 Case study 11.

1254 Case study 11.

1255 Parent of student attending a government mainstream school. Parent survey participant.

Others suggested establishing 'disability audits' of schools, alongside punitive measures for schools that failed to meet their legal obligations under anti-discrimination law, including the Standards.¹²⁵⁶ Some recommended funding bonuses for schools who met 'inclusion targets'.¹²⁵⁷ Others wanted specific targets and compliance measures around working with students with specific disabilities, including autism spectrum disorder.¹²⁵⁸

Several mentioned increasing the role of regional DEECD staff to make sure departmental policies are followed. Others said there should be an independent oversight body because they did not consider DEECD to be proactive enough.¹²⁵⁹

More common was a call for using existing accountability systems to include specific checks on how schools are performing in relation to students with disabilities. Many wanted to see key performance indicators for principals around educational outcomes of students with disabilities. The Commission was not able to verify if any schools currently include such measures in their principal's Performance and Development Plan, however, we note that the departmental Guidelines for Principal Class Performance and Development are silent on disability.¹²⁶⁰

On a similar theme, Autism Victoria (Amaze) recommended that all principals be required to develop and implement 'an effective whole school inclusion program for students with a disability and this key performance indicator be directly linked to wage and bonus payments'.¹²⁶¹

Several educators suggested that existing inspections of schools, as required by VRQA, be recalibrated to include a stronger focus on deliverables for students with disabilities and as means of ensuring schools are following policy and guidance in the state or Catholic systems.¹²⁶² In the case of Independent schools, schools should have a policy and suite of practices in place to support students with disabilities. This would offer a cost-effective way to gain some whole-of-system accountability using existing mechanisms.

1256 Case study 4.

1257 HASD 9, 12.

1258 Submission 6, parent.

1259 See e.g. Case study 11, HASD 1. See also Submission 1, Disability Services Board regarding their proposal for disability complaints regarding education to be included in the jurisdiction of the Disability Services Commissioner.

1260 See <www.education.vic.gov.au/proflearning/schoolleadership/principalpd.htm> at 9 August 2012. The Commission notes that information has now been incorporated into the principal's induction toolkit, including the *Disability Discrimination Act 1992* and *Disability Standards for Education 2005*.

1261 Submission 10, Autism Victoria (trading as Amaze) 2.

1262 See e.g. HASD 3 and 12.

Recommendations

48. The Victorian Registration and Qualifications Authority examine the following in school registration reviews and inspections:
 - a) sample of individual learning plans and student support group minutes
 - b) data on educational outcomes for students with disabilities enrolled at the school
 - c) evidence of whole- of-school professional development on compliance with the anti-discrimination laws, including the positive duty to eliminate discrimination as far as possible and in the case of government schools, the *Charter of Human Rights and Responsibilities Act 2006*
 - d) incident records regarding use of seclusion and restraint
 - e) complaint data.
49. The inclusion of key performance indicators on participation and outcomes for students with disabilities in all school principals' performance development plans.
50. The *School Review Guidelines* be amended to provide that where a government school has students with disabilities enrolled that the critical friends appointed to conduct a school review must include a person with expertise in relevant disabilities.

Part 5: Response from the Department of Education and Early Childhood Development

The Victorian government schooling system includes 1,538 school communities and a work force of around 40,000 staff who provide education and care to over half a million students. Our schools reflect the diversity and richness of our State. The Victorian Government is committed to improving the learning outcomes of all students, by acknowledging their diverse needs. A key element of this commitment is an emphasis on improving educational outcomes for students with disabilities and additional learning needs.

The Department of Education and Early Childhood Development supports around 88,000 students with disabilities through universal and targeted policies, services and additional funding programs.

The Government provides an extensive range of support for students with additional needs, including specialist allied health staff, Student Welfare Coordinators, Flexible Learning Options, Primary Welfare Officers and the Language Support Program.

The Government has also invested more than \$170 million of additional funding into the Program for Students with Disabilities and student transport assistance, and made the largest single investment in capital works in special and autistic schools in more than a decade.

In 2012 and 2013, Victoria is providing an additional \$37 million to support students with disabilities and their schools through the More Support for Students with Disabilities National Partnership.

The Department has a strong record of innovation and support for students with disabilities, and the Victorian Equal Opportunity and Human Rights Commission report, *Held back > The experiences of students with disabilities in Victorian schools* provides an opportunity to consider if current provisions and support may be strengthened and improved. The Department, while acknowledging the small size of the research sample, values the voices of parents, children, young people and school communities, and this report is one source of information to inform future planning.

The Report does not contain an analysis of the recent case law in relation to the education of students with a disability in schools. As is reflected in the recent decisions of the Courts in discrimination litigation involving some Victorian government schools, the Department is aware of, and complying with, its obligations to students under anti-discrimination law.

The Department remains committed to a vibrant education system that values and celebrates diversity and ensures that schools have the necessary support and flexibility to deliver high quality learning and wellbeing outcomes for their students.

The Report makes reference to a number of current and planned programs and initiatives that will continue to build our systemic, leadership and workforce capacity, provide national leadership in curriculum and assessment for students with disabilities, deliver greater flexibility to our schools to make the resourcing and support decisions that best meet the specific needs of their students and increase local options and parent choice.

Some examples of this work include:

- the Inclusion On Line professional learning program, available to all schools, which provides tutor led training for staff in specific disabilities including Autism Spectrum Disorder (ASD) dyslexia, speech and language and hearing impairment
- the Autism, Planning a Successful Transition to Primary and Secondary School programs for schools and families with a child with an ASD to ensure collaborative planning and smooth transition for students with an ASD
- teacher scholarships for certified training courses in hearing impairment, mental health and ASD to build the qualifications and expertise in our schools and workforce
- the establishment of Autism Coaches in every Victorian school region to support schools in providing autism friendly learning environments and provide assistance to staff and leadership to support groups or individual students with an ASD
- a mental health professional learning program for school staff delivered in partnership with Monash University
- fifteen ASD Inclusion Support Program Coordinators in schools across Victoria to strengthen a whole-school culture of inclusion, identify and support the curriculum and wellbeing needs of students, increase the skills and knowledge of staff to support students with an ASD, and provide additional support and expertise to support the school community
- the Abilities Based Learning and Education Support (ABLES) curriculum, assessment, reporting and teaching strategies resource for teachers working with students with intellectual and learning disabilities
- access for school leaders and staff to visits, resources and expertise from Down Syndrome Victoria to support all children with Down Syndrome starting their first year of school to ensure a successful transition
- satellite Units that provide specialist facilities, disability based expertise and special school teachers in mainstream schools for students with intellectual disabilities.
- Resources and expertise from Autism Victoria (AMAZE) is available to schools to enhance their support for students with an ASD
- the Victorian Deaf Education Institute (VDEI) which is committed to improving educational outcomes for deaf and hard of hearing children and young people from birth to 18 years throughout Victoria, through professional learning programs across the disciplines involved in deaf education, research and innovation into best practice and improving access to learning through the latest technology based solutions
- the Statewide Vision Resource Centre which provides curriculum material in alternative formats, a Support Skills Program and assistive technology for students with vision impairments
- allied health professionals, including psychologists, speech pathologists and social workers who work in schools to deliver support to students with disabilities, their families and teachers. This support includes assessments, education planning, direct consultation and work with individual students

The Department will continue to work with the Commission, other government and non-government agencies, people with disabilities, peak groups and our school communities to identify future partnership opportunities to improve support for students with disabilities and their schools.

Part 6: The Victorian Education System

This part describes the legal basis for the powers and obligations of Victorian schools, educational authorities and the Department of Education and Early Childhood Development (DEECD). These laws establish Victoria's education system and create obligations to avoid discrimination against students with disabilities and to respect and promote human rights.

This part also describes the major policies that relate to the education of students with disabilities in Victorian government schools. Information about Catholic and Independent schools is also provided.

Schools in Victoria

There are 2,239 schools in Victoria, providing education to 859,221 students.

The government school system is the largest provider of education, with 1,538 schools educating over half a million students and employing 40,000 staff.¹²⁶³ There are 76 government specialist schools.

An estimated 20 per cent of government school students have difficulties learning.¹²⁶⁴ Within this student population, there is a subset that is eligible for targeted funding through the Program for Students with Disabilities (PSD).

¹²⁶³ There are 541,992 school students in government schools in Victoria. Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

¹²⁶⁴ <www.audit.vic.gov.au/audits_in_progress/audits_details.aspx#learning> at 5 July 2012.

In 2011, 20,883 students received PSD funding. That is around 3.9 per cent of the government school population.¹²⁶⁵ Students approved for PSD funding made up 2.17 per cent of the government mainstream school student population in 2011.¹²⁶⁶ Almost all students attending government specialist schools have PSD funding.¹²⁶⁷

The Catholic system educates 194,109 students in 486 schools. It is primarily a mainstream system, with only seven Catholic specialist schools in Victoria.

Approximately 8,200 Catholic school students with disabilities receive targeted funding. This represents around 4.2 per cent of the total Catholic school student population. The Catholic Education Commission Victoria estimates that another 10 per cent of students require adjustments under anti-discrimination law but do not receive targeted funding.¹²⁶⁸

There are 215 Independent schools in Victoria educating 123,121 students. Most Independent schools are mainstream schools; however, there are 11 specialist schools in this sector, including small schools with a highly targeted student population, such as the Mansfield Autism Statewide Services: Mansfield Autism School and Travelling Teacher Program.

¹²⁶⁵ Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 13.

¹²⁶⁶ That is 11,525 students out of 530,821 students in all government mainstream schools. Ibid.

¹²⁶⁷ 9,385 out of 9,989 students in government specialist schools. Ibid.

¹²⁶⁸ The Catholic Education Commission of Victoria is the formal body established to receive Australian Government and Victorian Government grants on behalf of the Bishops of Victoria and all Catholic schools in Victoria. Catholic Education Commission Victoria and Commonwealth, above n 17.

In 2011, 171 Victorian Independent schools received targeted funding from the Australian Government to support 2,079 students with disabilities.¹²⁶⁹ This represents 1.7 per cent of the total Independent school population in Victoria.

Laws regulating Victorian schools

The *Education and Training Reform Act 2006* is the legislative basis for Victoria's education system. It underpins the structure of government schools and the processes for registering and monitoring government and non-government schools.

Government schools

The Education and Training Reform Act confers the power to establish and maintain government schools.¹²⁷⁰

The Act is the basis of free education in government schools.¹²⁷¹ It makes enrolment and full-time attendance at school compulsory for students between six and 17 years of age.¹²⁷²

Under the Act, a student is entitled to enrol at their neighbourhood government school, unless it is a special or distance education institution or has approved special entry criteria.¹²⁷³ The Act enables the Minister for Education to provide additional assistance to students with special needs.¹²⁷⁴

The Act sets out the powers and functions of school councils in government schools.¹²⁷⁵ These provisions mean that schools can operate autonomously, with the approval of their school council.¹²⁷⁶ School councils have broad powers, including the ability to employ some school staff¹²⁷⁷ and to arrange improvements to school buildings and grounds.¹²⁷⁸ School councils are obliged to submit four-year school plans to DEECD.¹²⁷⁹

Independent and Catholic Schools

The Education and Training Reform Act establishes the Victorian Registration and Qualifications Authority (VRQA), which registers government and non-government schools.¹²⁸⁰ The Authority will not register a school, including Catholic and Independent schools, unless it meets minimum standards. This means that all schools must not use corporal punishment, must have discipline policies based on procedural fairness and must meet minimum standards on learning outcomes, curriculum, enrolment, governance and review.¹²⁸¹

The VRQA can review or evaluate any registered school to ensure it continues to comply with these minimum standards.¹²⁸² It reviews each individual school's compliance with registration standards at least once every five years. While the VRQA conducts these inspections of Independent schools, it delegates these reviews to DEECD and the Catholic Education Commission of Victoria using powers under the Education and Training Reform Act.¹²⁸³

1269 Independent Schools Victoria and Commonwealth, above n 18, 3.

1270 *Education and Training Reform Act 2006* (Vic) s 2.2.1.

1271 For Australian students under the age of 20, in specified learning areas: *Education and Training Reform Act 2006* (Vic) s 2.2.4.

1272 *Education and Training Reform Act 2006* (Vic) s 2.1.1. The Act also sets out reasonable excuses for non-attendance, including accident, illness, or because of suspension or expulsion from school s 2.1.3.

1273 *Education and Training Reform Act 2006* (Vic) s 2.2.13.

1274 *Education and Training Reform Act 2006* (Vic) s 2.2.20.

1275 *Education and Training Reform Act 2006* (Vic) Part 2.3.

1276 At least one-third of school council members must be parents, elected by the parents of students currently enrolled at the school. The school principal is always the executive officer of the school council, and up to one-third of school council members can be DEECD employees. Community representatives can also be co-opted.
<www.education.vic.gov.au/management/governance/spag/governance/councils/legalframework.htm> at 31 July 2012.

1277 *Education and Training Reform Act 2006* (Vic) s 2.3.8.

1278 *Education and Training Reform Act 2006* (Vic) s 2.3.12.

1279 *Education and Training Reform Act 2006* (Vic) s 2.3.24. Annual reports must be submitted to DEECD on request.

1280 *Education and Training Reform Act 2006* (Vic) Part 4.2.

1281 Schools must also have an anaphylaxis management plan if they have a student at risk of anaphylaxis. *Education and Training Reform Act 2006* (Vic) s 4.3.1.

1282 *Education and Training Reform Act 2006* (Vic) s 4.3.2–3.

1283 See above n 1244.

Other bodies

The Education and Training Reform Act also establishes the Victorian Institute of Teaching, which handles registration and discipline of teachers.¹²⁸⁴

The Act also establishes the Victorian Curriculum and Assessment Authority (VCAA). The VCAA develops materials and policies on curriculum and assessment and is responsible for Victorian Certificate of Education (VCE) and Victorian Certificate of Applied Learning (VCAL) assessment.¹²⁸⁵ In addition, the VCAA has the power to modify assessments or exams for students with disabilities who have special educational needs or who are unable to sit the assessment or exam.¹²⁸⁶

Structure of the education system

DEECD is the state government department responsible for school education. It provides services directly through government schools and indirectly through regulation of non-government schools. It also provides some funding to non-government schools. However, the bulk of funding for Catholic and Independent schools comes from the Australian Government.

Structure of the department

DEECD central groups

The head office of DEECD is made up of seven central groups.¹²⁸⁷ The following central groups are the most relevant to this study.

The School Education Group develops and implements policy on the delivery of education in government and non-government schools.

This group includes the Student Wellbeing and Engagement Division, which among other things delivers and develops policy and programs relating to students with disabilities. This division administers the PSD, as well as the Student Support Services program and the Language Support Program. It also develops curriculum initiatives and workforce capacity initiatives.

The School Education Group also includes the Student Learning Outcomes Division, which develops resources for curriculum design, delivery, assessment and reporting. It also provides programs for students with specific needs, including Indigenous students and students with disabilities.¹²⁸⁸

The Policy and Professional Practice Division supports the performance and professional development of school staff, including leaders and principals, teachers and education support staff. It also develops and implements school improvement programs.

The Infrastructure and Finance Services Group

includes the transport unit. This unit makes policies and procedures relating to student transport, including the School Bus Program, the Conveyance Allowance Program and the Students with Disabilities Transport Program.

The Regional Support Group provides an interface between regions and the central office. This group includes the DEECD central office complaints unit.

DEECD regions

DEECD has nine regions.¹²⁸⁹ Each regional office has a regional disability coordinator. All regions will shortly have autism inclusion support coordinators, using funding made available under the Australian Government's *More Support for Students with Disabilities* initiative.

By the end of 2012, all regions will also have a regional Koori coordinator. In addition, each region employs a pool of Koori engagement officers.

Visiting teachers for those with hearing impairment, vision impairment and physical disability are employed by each region.

A Catholic Education Office in each diocese supports Catholic schools, similar to the way DEECD regional offices support government schools; however, the diocese does not have specific disability coordinators.¹²⁹⁰ There is no equivalent in the Independent sector because each school is its own entity.¹²⁹¹

1288 See Department of Education and Early Childhood Development, 'About Wannik', above n 189.

1289 Barwon South Western, Grampians, Gippsland, Hume, Loddon Mallee, Eastern Metropolitan, Northern Metropolitan, Southern Metropolitan and Western Metropolitan.

1290 The Catholic Education Office Melbourne employs an assistant director, student services who provides specialist expertise around disability and who was a key informant in this research.

1291 The peak body for Independent schools is Independent Schools Victoria. This is a membership body and cannot make binding policy on individual schools.

1284 *Education and Training Reform Act 2006* (Vic) Part 2.6.

1285 *Education and Training Reform Act 2006* (Vic) s 2.5.3.

1286 *Education and Training Reform Act 2006* (Vic) s 2.5.11.

1287 <<http://www.education.vic.gov.au/about/structure/offices.htm#2>> at 31 July 2012.

School networks

Every government school sits within a region; however, they are also clustered into groups of around 25 schools, called school networks. These are led by school principals and include mainstream, specialist, primary and secondary schools.

Student support staff – such as physiotherapists, speech therapists, social workers and psychologists – are employed by these school networks and service the clusters of schools.

Schools

While accountable to DEECD, governance of schools primarily rests with principal working with the school council.¹²⁹² The overarching objective of a school council is to assist in the efficient governance of the school or group of schools for which it is constituted.¹²⁹³

The school employs staff, such as integration aides, and determines the curriculum, professional development and other interventions that can support a student with disability to reach their educational potential.

Decisions regarding reasonable adjustments for students with disabilities are made at the school level.¹²⁹⁴ It is also the school principal on behalf of the student support group, who makes the application for PSD funding and, if successful, determines how the funding will be spent. Decisions regarding the use of integration aides, student support staff, equipment and assistive devices, physical environment, access to extracurricular activities and other adjustments are all made at the school level.

Schools are responsible for establishing a student support group for all students funded under the PSD and are 'strongly encouraged to establish this for any student with additional needs'.¹²⁹⁵ They are also responsible for developing and implementing an individual learning plan for each student eligible for PSD funding.¹²⁹⁶

In addition to their general registration requirements with the VRQA, all government schools must comply with the DEECD *Accountability and Improvement Framework*.¹²⁹⁷ Each school principal is required to submit school performance reports to DEECD. This includes data gathered from annual surveys to parents, students and staff, as well as assessment results.

In common with Catholic and Independent schools, government schools must also publish an annual report to the community and a School Performance Summary published on the website of the VRQA.

1292 Details of the objectives, functions, powers and duties of a school council are set out in sections 2.3.4 to 2.3.32 of the *Education and Training Reform Act 2006* (Vic). See also *Education and Training Reform Regulations 2007* (Vic). A ministerial order made under section 2.3.2 of the Act constitutes a school council as a body corporate and specifies the functions of the council and the powers it requires to perform its functions. Council members are the governing body of the body corporate.

1293 Above n 1276.

1294 However, if a complaint of discrimination is made against the school, the DEECD will also be a respondent to the complaint. This is because the DEECD is an education authority.

1295 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456, 9.

1296 All Aboriginal students must have an individual learning plan.

1297 The Catholic system has similar planning and accountability frameworks. See e.g. Catholic Education Office Melbourne School Improvement Framework. <<http://www.ceomelb.catholic.edu.au/our-schools/SIF>> at 31 July 2012.

State education policy and students with disabilities

Programs, services and support for students with disabilities in Victorian government schools

Victorian government schools operate under the principle of inclusive education. This means that all government schools are expected to maximise the participation and educational outcomes of students with disabilities using:

- the general school budget (called the student resource package)
- funding under the Language Support Program, which totals around \$30 million each year. Students who are not eligible for PSD funding can be assisted by this program. They do not have to meet specific criteria, and the use of this funding is determined by the school, which receives this funding as part of its student resource package¹²⁹⁸
- teaching and curriculum supports to promote learning outcomes for students with disabilities, such as the Abilities Based Learning and Education Support (ABLES)¹²⁹⁹
- web-based resources, including the Autism Friendly Learning website¹³⁰⁰
- professional development programs for staff, including training on specific disabilities, for example through the Victorian Deaf Education Institute
- teacher scholarships in autism, vision, hearing and special education¹³⁰¹
- workforce support, including primary welfare officers and student welfare coordinators.

In many cases, teachers can provide an effective education to students with disabilities through adjusting teaching methods and focusing on an individual approach to learning. However, some

students need significant adjustments or intensive support to access education. For this reason, there are a range of targeted initiatives and programs that schools can access in order to make the necessary adjustments to facilitate participation for students with disabilities.

Workforce support available to government schools includes:

- student support officers, including allied health professionals and visiting teachers. There are 520 student support officers employed across the government school system.¹³⁰²
- autism teacher coaches
- education support officers (integration aides).

Services available to government schools include:

- the Statewide Vision Resource Centre
- the Education Vision Assessment Clinic
- school transport
- free assessment service for some PSD applicants¹³⁰³
- government specialist schools, including three deaf schools, five autism schools and four schools for students with physical disabilities; the remaining 64 government specialist schools are targeted to students with intellectual disability¹³⁰⁴
- specialist support options in mainstream schools, including satellite units and Inclusion Support Programs (autism)¹³⁰⁵
- the Medical Intervention Support and the Schoolcare Program, for students requiring regular, complex medical care at school
- the Home Based Educational Support Program, for students unable to attend school due to the nature of their disability
- equipment grants to schools for students with vision impairments who are not eligible for the PSD.

¹²⁹⁸ This program provides assistance to teachers to develop 'strong language competency' in children and young people. It is divided into five learning modules: The Language Support Program, language disorders and difficulties, identifying and profiling students with language difficulties, teaching strategies for students with language difficulties and implementing a language support program across the school. See <www.education.vic.gov.au/studentlearning/programs/lsp/default.htm> at 9 July 2012.

¹²⁹⁹ See Department of Education and Early Childhood Development, 'ABLES: an introductory guide for Victorian Government schools', above n 233.

¹³⁰⁰ <www.education.vic.gov.au/about/directions/autism/default.htm> at 31 July 2012.

¹³⁰¹ The Victorian Deaf Education Institute.

¹³⁰² Full-time equivalent.

¹³⁰³ These are available for PSD applicants in the categories of intellectual disability and severe language disorder with critical educational needs. Information provided to the Commission by Student Engagement and Wellbeing Division, DEECD 21 November 2011.

¹³⁰⁴ To attend a specialist school on the basis of intellectual disability the student must have an IQ of less than 70.

¹³⁰⁵ This supports students with autism spectrum disorder. Following a trial in six schools in 2011, each region will have an autism spectrum disorder coordinator that is a teacher with specific knowledge and expertise. See above n 1300.

Targeted funding to facilitate participation of students with disabilities

Government schools

With an annual budget in the order of \$500 million, the Program for Students with Disabilities (PSD) is targeted to students with moderate-to-severe disability in specific categories of disability.¹³⁰⁶ Not all students with disabilities protected by anti-discrimination laws are eligible for this funding.

If eligible, the level of funding is determined by the Educational Needs Questionnaire, based on evidence and reports from relevant professionals. There are six levels of funding, ranging from \$5,894 to \$44,991 per annum.

The student's PSD funding allocation goes to the school and forms part of the school resource package. A school may choose to pool PSD funding to support a number of students with a shared support, for example, when an integration aide works with a number of students. Eligibility and other procedural aspects of the PSD are discussed in detail in Chapter 14.

Catholic schools

The Catholic Education Commission of Victoria distributes additional funding to students with disabilities who are eligible for this additional support. The eligibility criteria is broadly similar to that for the PSD.

There are three levels of targeted disability funding in the Catholic school scheme.¹³⁰⁷

Independent schools

Funding for students with disabilities attending Independent schools is available through targeted Australian Government programs. To apply for funding, the school submits an application to Independent Schools Victoria.

To be eligible for this funding, the student must be assessed as having a disability under at least one of seven categories of 'demonstrated education needs'.¹³⁰⁸

There are three levels of funding, ranging from \$1,700 to \$3,900 per annum.¹³⁰⁹ Similar to the PSD and Catholic school funding, this can be used to provide support teachers, aides, counsellors and resources. It is generally ongoing for four years.¹³¹⁰

Policy and guidance on students with disabilities in government schools

Government schools are expected to follow DEECD guidelines and policies. They are supported by their DEECD regional office and DEECD central groups to do so; however, the implementation most policy and procedure can be determined by the school. This is consistent with the DEECD ethos of local decision making by schools.

The major policies and guidelines relating to students with disabilities identified in this research are set out below.

The *School Policy and Advisory Guide* is a central source of operational policies and advice.¹³¹¹ Many DEECD policies and procedures sit within this guide.

Building respectful and safe schools: a resource for school communities deals with bullying in schools.¹³¹² This policy is discussed in Chapter 7.

The *Program for Students with Disabilities Guidelines*¹³¹³ sets out the eligibility criteria for this funding program and includes the procedures that schools must follow when making an application or appeal regarding PSD funding. These guidelines also set mandatory requirements, such as having an individual learning plan and a student support group for each student eligible for PSD funding. The PSD is described in detail in Chapter 14.

1306 Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 21 November 2011.

1307 Key informant interview, Catholic Education Office Melbourne.

1308 The categories are intellectual disability, severe language disorder, severe emotional disorder, autism spectrum disorder; physical disability – chronic health impairment, vision impairment and hearing impairment. Independent Schools Victoria, *Students with Disabilities Handbook 2013* (2012) 6.

1309 Level 4 funding is for students attending one of the 11 Independent specialist schools in the state. Key informant interview Independent Schools Victoria.

1310 Independent Schools Victoria, Independent Schools Victoria, above n 323, 6–7.

1311 See above n 1276.

1312 This replaced the Safe Schools are Effective Schools anti bullying guidelines released in 2006. See <<http://www.education.vic.gov.au/healthwellbeing/respectfulsafe/default.htm>> at 31 July 2012.

1313 Department of Education and Early Childhood Development, 'Program for Students with Disabilities Guidelines', above n 456.

The PSD guidelines are complemented by the *student support group Guidelines*, which provide guidance to schools on how to establish and run a student support group. They also describe how to develop and implement an individual learning plan.¹³¹⁴ The operation of student support groups and the use of individual learning plans are discussed in Chapter 8.

The *Effective Schools and Engaging Schools: Student Engagement Policy Guidelines* cover a wide range of policies that seek to maximise student engagement with school. They also contain the policies and procedures relating to suspension and expulsions from government schools.¹³¹⁵ These are discussed in Chapter 9.

The *Restraint of Student Policy* forms part of the *School Policy and Advisory Guide* and deals specifically with physical restraint of students.¹³¹⁶ This policy is described in detail in Chapter 10.

DEECD has developed various transport policies, including the *Procedural Guidelines Conveyance Allowance Program in Rural and Regional Victoria* and the *Transport for students attending specialist school procedural guidelines*.¹³¹⁷ Transport eligibility and policy is discussed in Chapter 11.

The *Addressing parents' concerns and complaints effectively policy and guides*¹³¹⁸ require all government schools to develop a complaints policy and provide guidance on how that policy should operate. The policy explains that complaints are expected to be dealt with by schools in the first instance before they can be escalated to the regional office or the DEECD deputy secretary. More detail on the DEECD complaints process is provided in Chapter 13.

The *Accountability and Improvement Framework for Victorian Government Schools* sets out three outcomes that government schools strive to achieve; that is, 'improved student learning, enhanced student engagement and wellbeing, and successful transitions and pathways'.¹³¹⁹ Accountability measures are discussed in Chapter 16.

Federal education policy

Commonwealth review of school funding

In April 2010 the Australian Government initiated a comprehensive review of funding arrangements for Australian schools (the Gonski Review).

The aim of the review was to examine funding and its impact on school outcomes for students, across the government and Catholic systems and the Independent school sector. A further aim was to address inequities in educational outcomes among disadvantaged students, including those with disabilities.

The Review Panel delivered its final report in December 2011.¹³²⁰ It found that there are significant inconsistencies in the way schools are funded. There is a lack of consistency in funding levels provided by state and territory governments; a lack of clarity in their funding roles and differences in the way students with educational disadvantage are supported; and a lack of coordination.

The report confirms that funding is required across all school sectors, with the greatest funding need currently experienced by the government sector. This is because more disadvantaged students attend government schools.¹³²¹ The report estimated that, nationally, 78 per cent of students with disadvantage in government schools were students with disabilities.¹³²²

The panel recommended a new funding framework called the Schooling Resource Standard. This would be used in recurrent funding for all schools and would consist of separate standard amounts per student.

1314 Department of Education and Early Childhood Development, 'Student Support Group Guidelines', above n 457.

1315 Department of Education and Early Childhood Development, 'School Policy and Advisory Guide: student participation', above n 552. See also Department of Education and Early Childhood Development, 'Ministerial Order no. 184', above n 578.

1316 Department of Education and Early Childhood Development, 'School Policy and Advisory Guide: safety response- restraint', above n 695. See also *Education and Training Reform Regulations 2007* reg 15.

1317 Department of Education and Early Childhood Development, 'Conveyance Allowance Guidelines', above n 762; Department of Education and Early Childhood Development, 'Transport for specialist schools guidelines', above n 768.

1318 Department of Education and Early Childhood Development, 'Addressing parents' concerns and complaints effectively', above n 868.

1319 Department of Education and Early Childhood Development, 'Accountability and Improvement Framework', above n 1232. State of Victoria, Department of Education and Early Childhood Development, *Accountability and Improvement Framework for Victorian Government Schools 2012* (2012). See also Department of Education and Early Childhood Development, *School Review Guidelines*, above n 1235.

1320 Australian Government, 'Final Report of the Review of School Funding' above n 27.

1321 Ibid 13.

1322 Ibid 10.

Secondly, it recommended that disadvantage be addressed through a series of loadings targeted at socioeconomic background, disability, English language proficiency, needs of Indigenous students, school size and school location.

The report recommends that government move away from targeted funding programs for students with disabilities like the PSD. Rather, it argues that the additional costs of supporting students with disabilities should be included as a loading in the Schooling Resource Standard once nationally consistent data on student numbers and adjustment levels becomes available.

This loading for students with disabilities would be fully publicly funded.

Further recommendations include setting up an independent national schools resourcing body, which will index and review the School Resource Standard. The report also recommends that the National Schools Resourcing Body consult with state and territory governments to develop an 'initial range for students with disabilities entitlement'.¹³²³

Following the Gonski review, the Council of Australian Governments is now developing a nationally consistent reporting tool on adjustments made for students with disabilities, bringing the definition of disability into line with the *Disability Discrimination Act 1992*.¹³²⁴ This work recognises that states and territories have inconsistent definitions of disability and are not keeping consistent data.¹³²⁵

State and territory bilateral agreements, which reflect state and territory funding needs, would be implemented under the review. Consultations are to occur between state and territory governments. It is anticipated that legislation to enshrine the principles of the Australian Government's implementation of the Gonski review will be introduced into Parliament in late 2012, and initial funding to roll out from 2014.

The More Support for Students with Disabilities initiative

As the Gonski reforms are some time away, in 2011 the Australian Government announced a two-year initiative to provide additional funding to support students with disabilities.

An additional \$47.8 million in funding has been allocated to Victoria. Of this, \$37.2 million will go to the government school system, \$8.1 million will

go to the Catholic system and \$2.5 million will go to Independent schools.¹³²⁶

The Victorian Government, the Catholic Education Commission of Victoria and Independent Schools Victoria have now agreed action plans with the Commonwealth.¹³²⁷

The main elements of the Victorian Government's plan are:

- provision of vision-assistive technology and teacher training on its use
- a trial of deaf captioning
- providing training for all school staff on understanding their obligations under the *Disability Standards for Education 2005*, using an online learning program
- developing support centres of expertise in the educational needs of students with disabilities, which can be accessed by other schools that may not have this expertise
- providing specialist training to all school principals and all school leaders on the needs of students with disabilities
- expert consultation on Down syndrome, through Down Syndrome Victoria, and deaf education, through the Victorian Deaf Education Institute
- expert consultation on autism spectrum disorder through autism Victoria
- autism teacher coaches and school supports
- autism inclusion support coordinators in each region
- additional teacher specialisation scholarships in deaf education and in teaching students with autism spectrum disorder
- the Inclusion Online learning portal for teachers on disability specific knowledge, teaching, assessment, classroom support and learning plans for students with disabilities and learning difficulties
- professional learning for specialist schools, including in preventing and managing extreme and challenging behaviour, in partnership with the Principals' Association of Specialist Schools
- the Learning Difficulties School Support Program, which includes \$14 million for schools to access a range of supports to identify learning approaches tailored to individual needs

1323 Ibid xxvi.

1324 <<http://www.deewr.gov.au/Schooling/Programs/Pages/swdtrial.aspx>> at 11 July 2011.

1325 From May to July 2011, the new reporting tool was trialled in 150 schools across Australia.

1326 See above n 25.

1327 Catholic Education Commission Victoria and Commonwealth, above n 17; Independent Schools Victoria and Commonwealth, above n 18; Victoria and Commonwealth, above n 23.

- further professional development on the use of ABLES resources.¹³²⁸

The main elements of the Catholic system's plan are:

- provision of assistive technology, such as software and communication tools, to students with sensory disabilities
- training for teachers and learning support staff on the range of assistive technology tools available and the factors in selecting and using these tools
- postgraduate training for lead teachers from 50 schools, with a focus on physical, social/emotional/behavioural, intellectual and language disability
- funding for these 50 teachers to coordinate early years intervention programs at their schools and establish networks to share this knowledge beyond these sites
- a best practice transition-planning guide for Grade 5 and 6 to Year 7 transitions, focusing on individual learning, health support, complex care needs and behaviour support planning
- an audit of successful practice around transition from school to post-school options.¹³²⁹

The main elements of the Independent sector's plan are:

- an authorised training centre to train teachers and support schools to deliver two professional development programs: Instrumental Enrichment and Junior Great Books¹³³⁰
- to train approximately two teachers from half of all Independent schools in these programs.¹³³¹

Legal obligations

Two regimes of anti-discrimination law operate in Victoria, established by Victorian and Commonwealth legislation. These laws are the:

- *Equal Opportunity Act 2010*
- *Disability Discrimination Act 1992*
- *Disability Standards for Education 2005*.

Both Victorian and Commonwealth regimes apply to Victorian educational authorities and schools. This means that schools have obligations to avoid discriminating against students with disabilities under both Victorian and Commonwealth law.

Victorian laws

Equal Opportunity Act

The Equal Opportunity Act makes it against the law to discriminate against someone because of a range of personal characteristics, including disability and age. Disability is broadly defined and includes physical, intellectual, learning and sensory disabilities, mental illnesses, medical conditions and diseases. The protection from discrimination extends across many areas of public life, including in education. This means that schools and other educational authorities have obligations not to discriminate against students with disabilities.

Discrimination against students can be direct or indirect. Direct discrimination occurs if a school treats, or proposes to treat, a student unfavourably because of their disability.¹³³² Indirect discrimination occurs when a student has to comply with an unreasonable requirement or condition that disadvantages them because of their disability.¹³³³

Examples of unlawful discrimination could include:

- refusing a student's application for enrolment because of their disability
- suspending a student because of behaviour associated with their disability
- not providing adequate support, such as aide time, to a student with disability
- not providing adequate adjustments in exams
- allowing a student to be bullied or isolated because of their disability.

¹³²⁸ For a full list of the initiatives being implemented in Victorian government schools, see above n 318.

¹³²⁹ Catholic Education Commission Victoria and Commonwealth, above n 17.

¹³³⁰ Instrumental enrichment professional development is a program of strategies to enhance an individual's skills to learn, through social and cognitive adaptability. Junior Great Books is an educational method that promotes discussion and critical thinking around books and literature.

¹³³¹ Independent Schools Victoria and Commonwealth, above n 18.

¹³³² *Equal Opportunity Act 2010* (Vic) s 8(1).

¹³³³ *Equal Opportunity Act 2010* (Vic) s 9(1)(b).

It is important to note that the Equal Opportunity Act contains a number of exceptions. This means that schools may be able to discriminate in certain circumstances. For example:

- schools are able to discriminate if it is necessary to protect the health or safety of any person¹³³⁴
- schools for students with a particular disability are able to refuse enrolment applications from students who do not have that particular disability.¹³³⁵

In some limited circumstances, the Victorian Civil and Administrative Tribunal can grant a temporary exemption from part of the Equal Opportunity Act.¹³³⁶

Obligation to make reasonable adjustments

The Equal Opportunity Act requires schools to make reasonable adjustments where needed so that students with disabilities can participate in and derive substantial benefit from educational programs. This applies unless the student could not participate or derive benefit from the program even with the adjustments. The Act sets out what schools should consider when thinking about whether or not an adjustment is reasonable.¹³³⁷ These include the effect on the person's ability to achieve learning outcomes and to participate in courses or programs, the financial impact of making the adjustment and the consequence of not making the adjustment.¹³³⁸

Protection of parents and people who make complaints

Students who experience discrimination can make a complaint to the Victorian Equal Opportunity and Human Rights Commission (the Commission). Parents can also make complaints on behalf of their children. Some parents or students may choose to raise their complaint with their school or through the DEECD complaints process. In all cases, students and their parents should not be victimised for making a complaint. For example, it is unlawful to isolate a parent because they have made a complaint on behalf of their child with a disability.¹³³⁹

The Equal Opportunity Act also prohibits discrimination in goods and services. Courts have found education to be a service.¹³⁴⁰ If schools provide services to parents, they must not discriminate against parents either because of their association with a child with disability or because of any other protected characteristic.

Positive duty to eliminate discrimination

The Equal Opportunity Act requires all schools in Victoria to take a proactive approach to preventing discrimination. Educational authorities, such as DEECD and diocese Catholic education offices, also have this positive duty to take reasonable and proportionate measures to eliminate discrimination as far as possible.¹³⁴¹

This includes taking steps to address the structural barriers children with disabilities face in accessing education and participating in all aspects of schooling on an equal basis with other students. It also requires schools and education authorities to pay regard to particularly vulnerable groups who may face multiple disadvantages, such as Indigenous students with disabilities.

Commonwealth laws

Disability Discrimination Act

The Disability Discrimination Act applies in all Australian jurisdictions. Like the Equal Opportunity Act, it makes it against the law to discriminate against a student with a disability in all Victorian schools.

The definition of disability in the Disability Discrimination Act is different to the definition in the Equal Opportunity Act. However, both definitions are broad and inclusive.

Both Acts define disability to include past, present and future disabilities, as well as imputed disabilities.¹³⁴² It also includes behaviour that is a symptom or manifestation of a disability.¹³⁴³

1334 *Equal Opportunity Act 2010* (Vic) s 86(1)(b).

1335 *Equal Opportunity Act 2010* (Vic) s 39.

1336 *Equal Opportunity Act 2010* (Vic) s 89. The factors that the tribunal must consider are set out in section 90.

1337 *Equal Opportunity Act 2010* (Vic) s 40.

1338 *Equal Opportunity Act 2010* (Vic) s 40(3).

1339 *Equal Opportunity Act 2010* (Vic) ss 103–4, Disability Discrimination Act 1992 (Cth) s 42.

1340 *Sian Grahl v The State of New South Wales* (NSW Department of Education) and *Houston* (2000) EOC 93-095.

1341 *Equal Opportunity Act 2010* (Vic) s 15.

1342 That is, where a person is assumed to have a disability.

1343 *Equal Opportunity Act 2010* (Vic) s 4, Disability Discrimination Act 1992 (Cth) s 4.

Similarly to the Equal Opportunity Act, the Disability Discrimination Act makes both direct and indirect disability discrimination against the law.¹³⁴⁴ A failure to make reasonable adjustments for a student with disability will also constitute discrimination.¹³⁴⁵ Some exemptions apply that make it lawful to discriminate in certain circumstances and the Australian Human Rights Commission has the power to grant specific temporary exemptions.¹³⁴⁶

It is an offence to victimise someone for making or being involved in a complaint under the Disability Discrimination Act.¹³⁴⁷

Disability Standards for Education

The *Disability Standards for Education 2005* (the Standards) are laws made under the Disability Discrimination Act. They are designed to spell out in detail the rights and obligations under the Disability Discrimination Act. It is unlawful to contravene a disability standard.¹³⁴⁸

The *Standards* clarify the obligations of schools to ensure that students with disabilities can access education on the same basis as other students. They cover:

- enrolment
- participation
- curriculum development, accreditation and delivery
- student support services
- elimination of harassment and victimisation.

Each part of the Standards sets out the rights of students with disabilities, the obligations of education providers and compliance measures. This includes the right to reasonable adjustments that are necessary to ensure that students with disabilities can access and participate in education on the same basis as students without disabilities. 'On the same basis' means that a student with disability must have opportunities and choices which are comparable with those offered to students without disability.

The Standards also require education providers to establish strategies to ensure students can be educated in an environment free from discrimination. This includes preventing and responding to harassment and victimisation directed at students with disabilities.¹³⁴⁹

When considering whether an adjustment is reasonable, schools should take into account the student's learning needs and balance the interests of the student with disability, the education provider, staff and other students.¹³⁵⁰ Schools do not need to make unreasonable adjustments.

However, even for those adjustments that are reasonable under the Standards, changes do not have to be made if this would impose unjustifiable hardship on the education provider. All relevant circumstances are to be taken into account when assessing unjustifiable hardship, including the benefit or detriment to any people concerned, the disability of the prospective student and the financial circumstances of the education provider.¹³⁵¹

The Standards require that the Australian Minister for Education review whether the Standards are effective at meeting their aims, and whether they should be amended.¹³⁵² The report on the first 'five-year review' of the Standards was published by the Australian Department of Education, Employment and Workplace Relations in June 2012. The Review was based on submissions from and stakeholder discussions with education providers, students and families and disability organisations.¹³⁵³

1344 *Disability Discrimination Act 1992* (Cth) ss 5–6.

There are differences in the legislative tests for discrimination under the Disability Discrimination Act and under the Equal Opportunity Act. For example, to show direct discrimination under the Disability Discrimination Act a person must show that they have been treated less favourably than another person in similar circumstances, but under the Equal Opportunity Act there is no need for a 'comparator'.

1345 *Disability Discrimination Act 1992* (Cth) ss 5(2) and 6(2).

1346 *Disability Discrimination Act 1992* (Cth) s 55.

1347 *Disability Discrimination Act 1992* (Cth) s 42.

1348 *Disability Discrimination Act 1992* (Cth) ss 31–32.

1349 *Disability Standards for Education 2005* (Cth) s 8.3.

1350 *Disability Standards for Education 2005* (Cth) s 3.4.

1351 *Disability Standards for Education 2005* (Cth) s 10.2.

1352 *Disability Standards for Education 2010* (Cth) 11.1.

The Review must be conducted within five years of the commencement of the Standards, with further reviews at no more than five-year intervals.

1353 Australian Government, 'Report on the review of the Disability Standards for Education 2005', above n 37, 2-3.

The Review considered whether, within a contemporary education context, the Standards were assisting to clarify obligations for education providers, students and families, to enable students to access and participate in education, and to eliminate discrimination against students with disability.¹³⁵⁴ The Report included observations of inconsistent awareness of the Standards, barriers caused by discrimination and bullying, and the impact of lack of resources to implement the Standards.¹³⁵⁵ The Report recommended a number of changes to the Standards, as well as measures to promote the Standards, provide practical and targeted information and guidance materials and to incorporate the Standards into other Commonwealth policy and regulatory frameworks (such as the National Assessment Program – Literacy and Numeracy (NAPLAN) and the National Professional Standards for teachers and principals).¹³⁵⁶

The Australian Government accepted the recommendations including to:

- work with agencies to add information about the Standards to existing resources, and to produce additional information and guidance material
- discuss the feasibility of an awareness-raising campaign (subject to resources), and
- investigate ways to develop national consistency in the format and use of individual education plans.¹³⁵⁷

While they also gave support in principle to recommendations around changing the Standards, they deferred any amendments until after they had clarified the project to consolidate Commonwealth anti-discrimination laws. This project is currently underway.¹³⁵⁸

¹³⁵⁴ Ibid 2.

¹³⁵⁵ Ibid 5, 21, 34-35.

¹³⁵⁶ Ibid ix-xi.

¹³⁵⁷ Australian Government, 'Response to the review of the Disability Standards 2005', above n 39, 4-7.

¹³⁵⁸ Ibid 3.

Obligations under human rights law

Charter of Human Rights and Responsibilities

The *Charter of Human Rights and Responsibilities Act 2006* sets out the rights, freedoms and responsibilities of all people in Victoria, including children.

In Victoria, all new laws must be consistent with the rights in the Charter.¹³⁵⁹ This includes when the government is making legislation, including Acts and regulations.¹³⁶⁰ The Charter must also be taken into account when government is developing policies and guidance.

In Victoria, public authorities are obliged to protect and promote the rights set out in the Charter.¹³⁶¹ A public authority includes the DEECD and all government schools. The VCAA and VRQA are also public authorities. Each of these organisations, government school staff and school councils are legally obliged to observe the human rights of children and families with whom they have contact.¹³⁶² Failure to do so is unlawful.

¹³⁵⁹ Unless the Victorian Parliament expressly makes an override declaration under section 31 of the Charter. This provision has never been used by the Parliament.

¹³⁶⁰ This includes the requirement to prepare a Human Rights Certificate for any subordinate legislation (regulations). *Subordinate Legislation Act 1994* (Vic) s 12A, *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 30. The Commission notes that the Human Rights Certificate for the *Education and Training Reform Regulations 2007* (Vic) [regulation 15, regarding the use of restraint in schools] considered the right to freedom of movement but did not consider rights to equality before the law, protection from cruel, inhuman or degrading treatment, protection of children, or right to liberty and security of the person.

¹³⁶¹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(1). However, this does not apply if, as a result of a Commonwealth or state statutory provision or otherwise under law, the public authority could not reasonably have acted differently or made a different decision. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(2).

¹³⁶² *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(1). However, this provision does not apply if, as a result of a Commonwealth or state statutory provision or otherwise under law, the public authority could not reasonably have acted differently or made a different decision. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(2).

Catholic and Independent schools are not public authorities and so are not bound by the Charter. However, the Charter still applies indirectly to their work. This is because the Charter affects the interpretation of legislation, regulations and government policies that apply to non-government schools. The Charter contains 20 rights that reflect the principles of freedom, respect, equality and dignity. A public authority, including a government school, can only limit a person's rights where the limit is reasonable and can be demonstrably justified.¹³⁶³ The following rights may be particularly relevant to students with disabilities.

Recognition and equality before the law: All Victorians have the right to enjoy their human rights free from discrimination. This right is relevant to all aspects of a student's education when schools consider adjustments so that students with disabilities can access education.¹³⁶⁴

Protection of children and families: This includes the right of children, without discrimination, to protection of their best interests.¹³⁶⁵ This right is relevant to school decisions that affect students who are under 18 years and decisions that affect families.¹³⁶⁶

Protection from cruel, inhuman and degrading treatment:¹³⁶⁷ This right has particular significance with regard to the use of restraint and seclusion in schools. Other rights relevant to restrictive interventions include equality before the law, freedom of movement, protection of children, and liberty and security of the person.¹³⁶⁸

Right to privacy and reputation: This includes protection from arbitrary interference with personal information, physical and psychological integrity, dignity and the social identity of a person. This right could be relevant to how schools collect and share information about students with disabilities, as well as being relevant to the use of restraint and seclusion.

Right to life: This includes a positive duty to protect the lives of vulnerable children in government schools.¹³⁶⁹

¹³⁶³ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

¹³⁶⁴ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8.

¹³⁶⁵ *Charter of Human Rights and Responsibilities Act 2006* s (Vic) 17(2).

¹³⁶⁶ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17.

¹³⁶⁷ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 10.

¹³⁶⁸ See Chapter 10.

¹³⁶⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 9.

International obligations

Students with disabilities also have rights under international law. These include the rights contained in the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities*.¹³⁷⁰ Australia's ratification of these treaties creates a positive legal obligation to ensure adherence to these rights and principles within our laws, policies and practices.

The Charter is based on international human rights standards and contains a provision whereby international law may be considered when a statutory provision is interpreted.¹³⁷¹ Thus, the courts and government departments may consider rights contained in these conventions when interpreting the Education and Training Reform Act and any other Victorian laws relating to education.

Both the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities* make it clear that the best interests of the child should be a primary consideration in all government decisions that affect children.¹³⁷²

Under the *Convention on the Rights of the Child*, all children have a right to education. State parties, including Australia, are obliged to take measures to achieve the right to education for all children, progressively, and based on equal opportunity. This includes taking measures to promote regular attendance at school and to ensure that school discipline is dignified and consistent with children's rights.¹³⁷³ The convention also contains specific rights for children with disabilities. It recognises that children with disabilities should be able to live a full life, with dignity and active participation in the community. Under the convention, state parties should ensure that children with disabilities receive assistance, where necessary, to provide effective access to education.¹³⁷⁴

¹³⁷⁰ Other relevant human rights treaties include the *International Convention on Civil and Political Rights* and the *International Convention on Economic, Social and Cultural Rights*.

¹³⁷¹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 32(2).

¹³⁷² *Convention on the Rights of Persons with Disabilities*, opened for signature 3 March 2007, A/RES/61/106, art 7 (entered into force 3 May 2008); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, art 3 (entered into force 2 September 1990).

¹³⁷³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, art 28 (entered into force 2 September 1990).

¹³⁷⁴ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, art 23 (entered into force 2 September 1990).

The *Convention on the Rights of Persons with Disabilities* also makes it clear that state parties have obligations to build an inclusive education system. This includes ensuring that students with disabilities have support to effectively access education. In order to deliver inclusive education, state parties must ensure that teachers and staff are trained in disability awareness and in the use of technology, communication, educational techniques and materials to support students with disabilities.¹³⁷⁵ In addition, state parties have obligations to promote rights, eliminate discrimination, and to work towards making transport, public services, information and communication accessible for people with disabilities.¹³⁷⁶

In addition to these general obligations, international human rights protections also apply to the use of restrictive interventions such as restraint and seclusion. These include protections contained in the following international laws:

- *International Covenant on Civil and Political Rights*¹³⁷⁷
- *International Covenant on Economic, Social and Cultural Rights*¹³⁷⁸
- *Convention on the Rights of Persons with Disabilities*¹³⁷⁹
- *Convention on the Rights of the Child*¹³⁸⁰
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹³⁸¹

¹³⁷⁵ *Convention on the Rights of Persons with Disabilities*, opened for signature 3 March 2007, A/RES/61/106, art 24 (entered into force 3 May 2008).

¹³⁷⁶ *Convention on the Rights of Persons with Disabilities*, opened for signature 3 March 2007, A/RES/61/106, arts 4, 5 and 9 (entered into force 3 May 2008).

¹³⁷⁷ *International Covenant on Civil and Political Rights*, opened for signature on 19 December 1966, 999 UNTS 171, arts 7, 9, 10, 12, 24, 26 (entered into force 23 March 1976).

¹³⁷⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 19 December 1966, 999 UNTS 3, Arts 12, 13 (entered into force 3 January 1976).

¹³⁷⁹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, arts 4, 7, 14, 15, 16, 24 (entered into force 3 May 2008).

¹³⁸⁰ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, arts 3, 12, 19, 25, 37 (entered into force 2 September 1990).

¹³⁸¹ Under this Convention, state parties are obliged to prevent acts of cruel, inhuman or degrading treatment or punishment; ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are included in the training persons that are involved in the arrest, custody and interrogation, detention or imprisonment of any individual; and implement mechanisms to regularly review this. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 9 UNTS 1465 (entered into force 26 June 1987).

Appendices

Appendix 1: Participant profile

Educators

The main contact point for educators was the online survey, with 883 educators taking part.

A total of 23 educators attended 'have a say' days organised by the Commission, these included teachers, school principals, integration aides and workers from transition to work programs.

Nine educators provided case studies. Five were from specialist support providers, two were from government school principals and one was from a classroom teacher. A school council member from a government school provided the other case study.

Three educators participated in the Commission's phone-in; two were classroom teachers and one was an integration aide. All worked in state primary schools.

Educator survey participants

Most of the educator survey participants were classroom teachers, followed by integration aides and school principals.

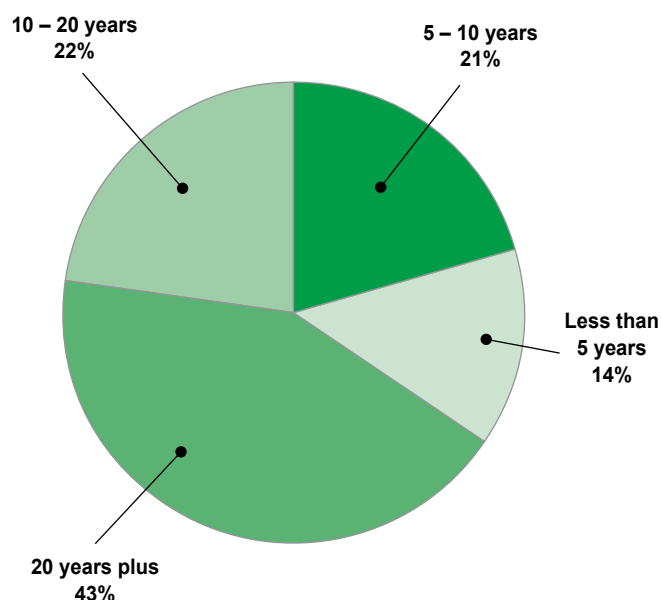
- 399 (45.7 per cent) participants were classroom teachers.
- 185 (21.7 per cent) participants worked as integration aides.
- 105 (12 per cent) participants were school principals.
- 76 (8.7 per cent) participants were specialist support providers (such as occupational or speech therapists).
- The remaining 109 (12.5 per cent) participants identified as 'other'. These included teachers specialising in sensory disabilities, integration aides and assistant principles.

Almost all educators (96 per cent) were from government schools, with almost three-quarters (639) working in government mainstream schools and 205 (23.4 per cent) working in government specialist schools. Sixteen educators from Independent schools and 15 educators from Catholic schools participated in the survey.

Length of time as an educator

Most participants were very experienced educators, with 43 per cent having more than 20 years experience.

Figure 17: Experience as an educator



Length of experience among participants was not limited to principals. Of the 398 classroom teachers who told us the number of years they had been an educator, 166 (41.7 per cent) had been an educator for more than 20 years.

Working with students with disabilities

Nine out of 10 respondents worked directly with students with disabilities at their school.¹³⁸² When asked about the number and proportion of students with disabilities at their school, the responses varied considerably across mainstream schools.¹³⁸³

Educators were asked about the range of disabilities present in the student population of their current school. Participants were able to report more than one disability.

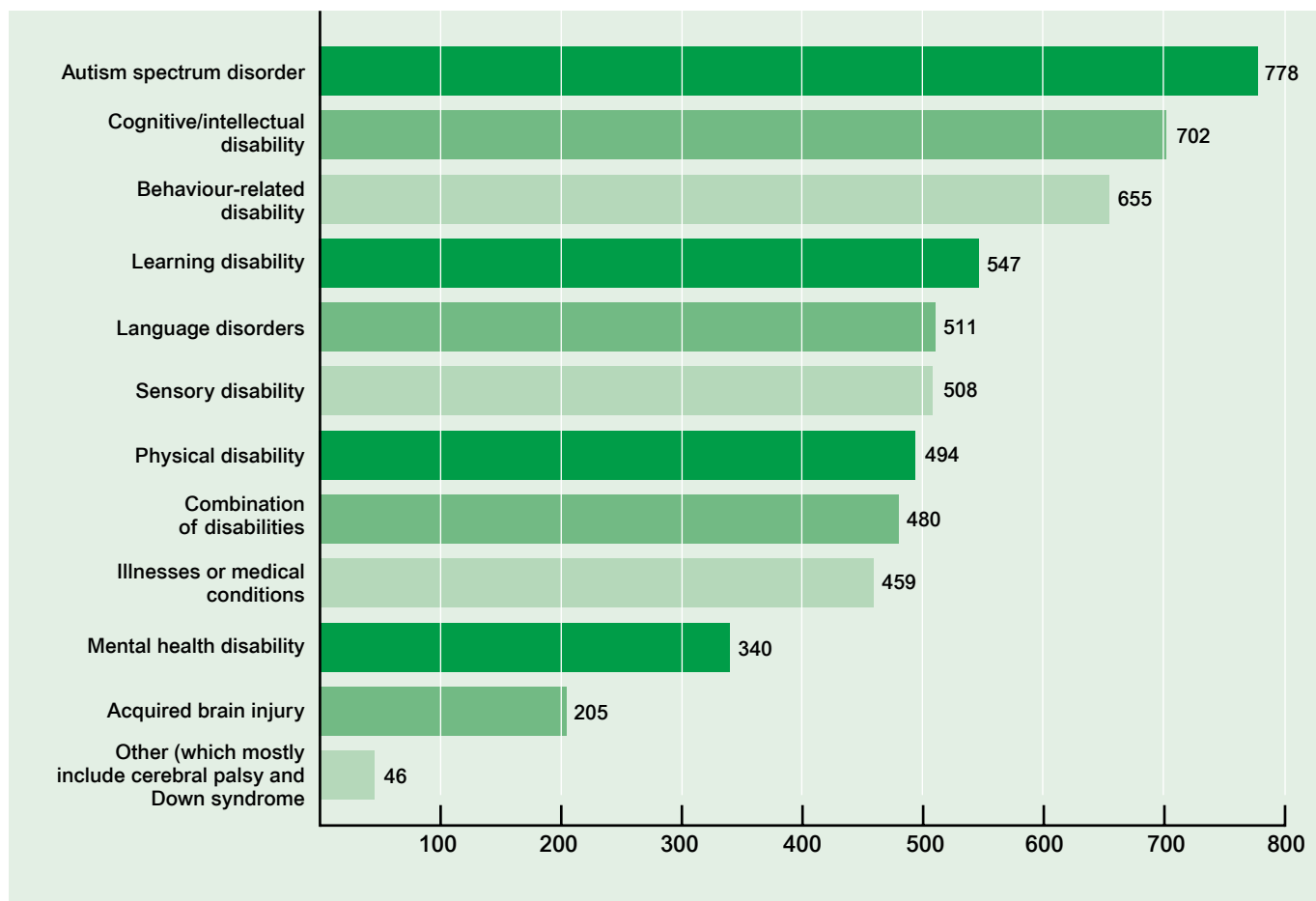
- The most common disabilities identified by all educators were autism spectrum disorder, cognitive impairment or intellectual disability, and behaviour-related disabilities. A significant number of educators identified students with multiple disabilities.

Parents and carers

The most frequent mode of participation by parents and carers (617) was through the survey. In addition, 90 parents and carers participated in 'have a say' days.

Twenty-four case studies were submitted by parents and carers, of which one was from a grandparent.¹³⁸⁴ Eight of these case studies regarded a child with autism spectrum disorder, three related to children with intellectual disability, one involved a child with a physical disability and another related to child with a sensory disability. Six related to children with multiple disabilities.¹³⁸⁵ Two related to more than one child with disability in the same family.

Figure 18: Types of disability in school population reported by educators



¹³⁸² Ninety-two per cent.

¹³⁸³ Specialist schools by their nature have a 100 per cent student with disability enrolment rate.

¹³⁸⁴ A total of 39 case studies were submitted.

¹³⁸⁵ The remaining five case studies did not disclose the nature of their child's disability.

Forty-five parents and carers participated in the phone-in, of which two were grandparents.¹³⁸⁶ Almost half (20) reported that their child had multiple disabilities, most typically intellectual disability and autism spectrum disorder. A further 12 had a child with autism spectrum disorder at school and five described their child's disability as intellectual disability, including Down syndrome. One case related to foetal alcohol syndrome, one to mental health disability and one to sensory disability.

Of the 40 parents in the phone-in who reported the type of school their child attended, 22 children attended a government mainstream school and 14 attended a government specialist school. Three had children in an Independent or Catholic mainstream school. One was home-schooling their child. Most of these students were in Prep to Year 6.

Parent survey participants

Demographic characteristics of the children

Of the parents who indicated the gender of their child in the survey, 427 (70.8 per cent) responses involved male students and 176 (29.2 per cent) referred to female students.

Twenty-three survey respondents identified their child as being from a culturally and linguistically diverse background. Eleven identified their child as being Aboriginal or Torres Strait Islander.

Parents were also asked about their child's disability, and were able to report more than one disability.¹³⁸⁷ Of the 617 parents and carers surveyed:

- 346 reported autism spectrum disorder
- 160 reported intellectual disability
- 119 reported learning disability
- 97 reported behavioural related disability
- 90 reported sensory disability
- 84 reported physical disability
- 74 reported language disorder
- 66 reported multiple disabilities
- 64 reported illness or medical condition
- 40 reported mental health disability
- 13 reported acquired brain injury.

Fifty-two parents reported 'other' disabilities, with most identifying Down syndrome, dissociative disorders, speech delays and auditory processing disorders.

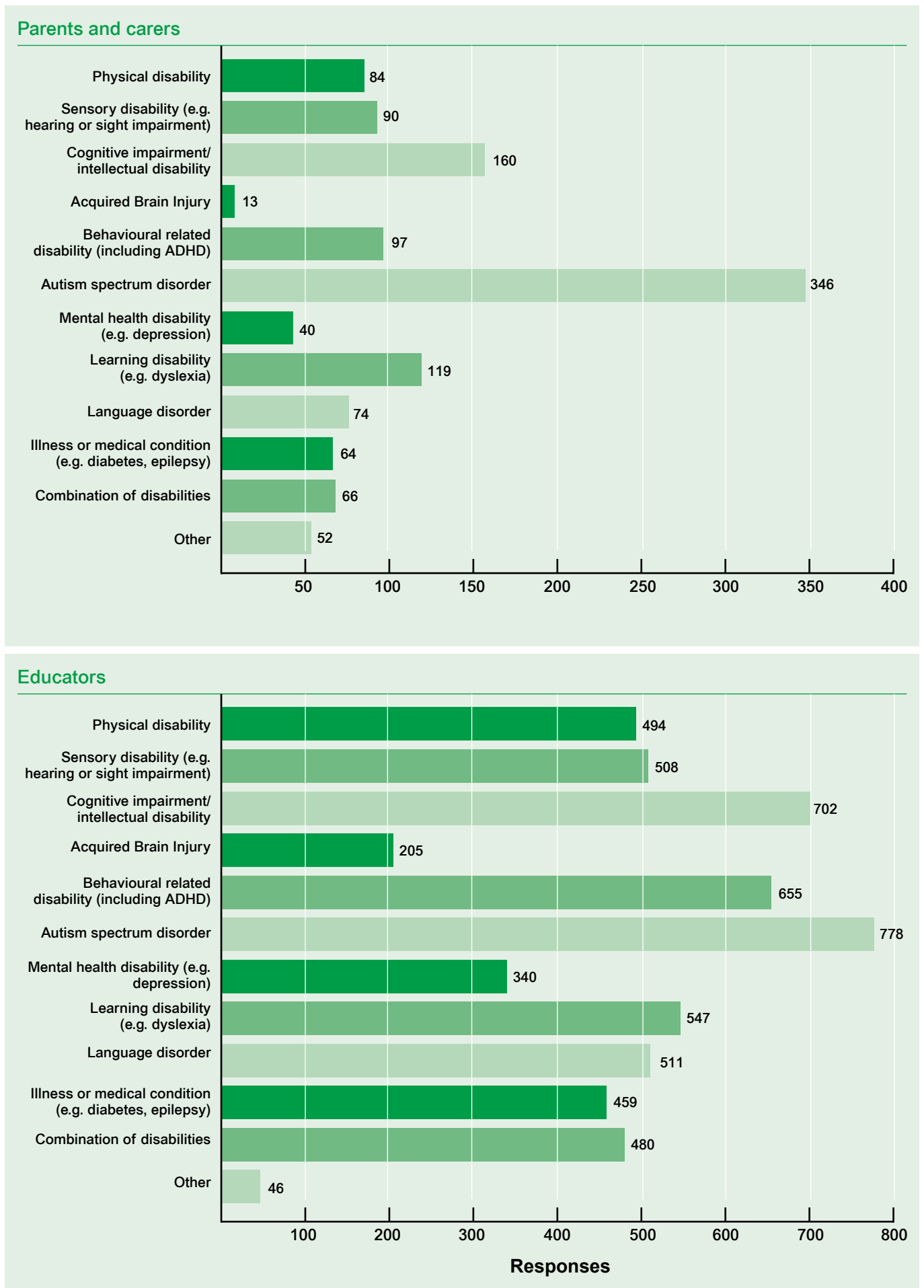
The most common disabilities reported by parents were similar to those identified by educators. Significantly, both parents and educators participating in this survey reported autism spectrum disorder most frequently, followed by intellectual disability.

However, the reporting levels of behavioural related disabilities were higher among educators. This may be because parents have more detailed knowledge of their child's disability and use a formal diagnosis rather than a global term about behaviour.

¹³⁸⁶ The number of grandparents within the survey cohort is not known. The total number of participants in the phone-in was 59.

¹³⁸⁷ However, the range of disabilities listed suggests that at least some of those who did not select multiple disabilities as an answer may parent or care for children who have a combination of disabilities.

Figure 19: Type of disability reported by parents compared to type of disability reported by educators

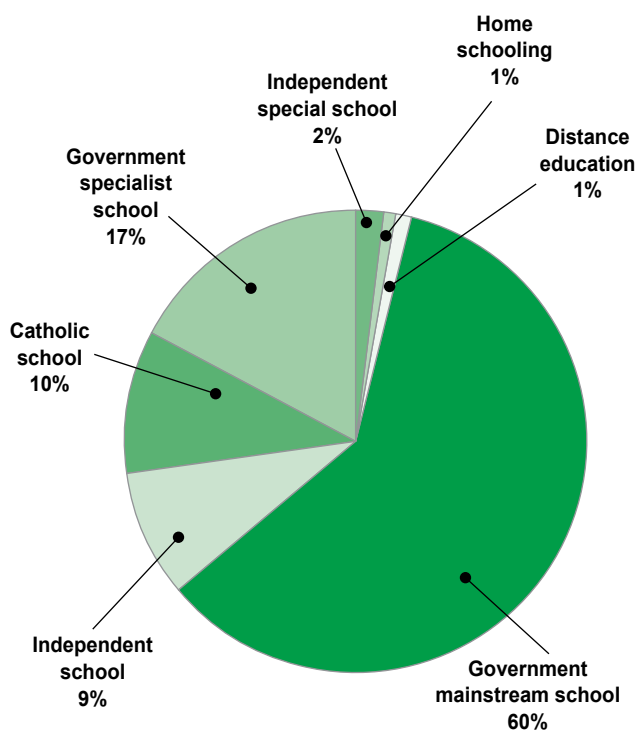


When asked what type of school their child attended, 368 parents (60.3 per cent of respondents) had a child in a government mainstream school, while 105 (17.2 per cent) had enrolled their child in a government specialist school.

Fifty-two parents (8.5 per cent) had their child in an Independent mainstream school, while 12 (2.1 per cent) had their child in an Independent specialist school. Ten per cent of parents (60 parents and carers) had a child with disability in the Catholic sector, all of whom were in mainstream schools.¹³⁸⁸

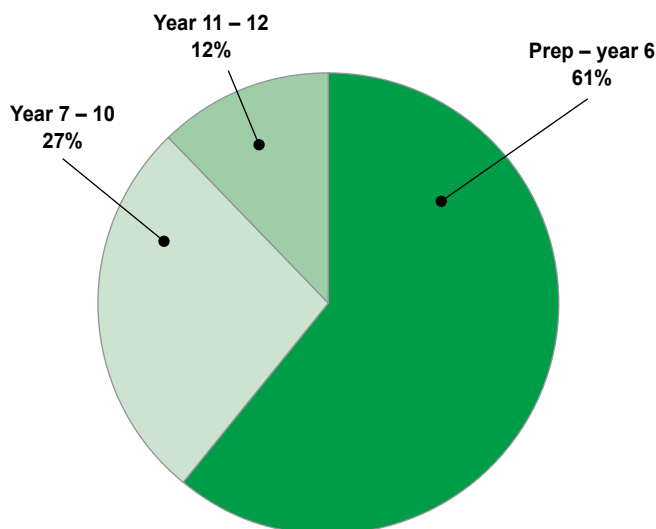
Seven parents were home-schooling their child and five parents had children using distance education.¹³⁸⁹

Figure 20: Type of school



Most parents (61 per cent of respondents) had children in Prep to Year 6. However, there was a good representation from parents of children with disabilities in high schools, including Years 11 and 12.

Figure 21: Stage of schooling



Geographic location of schools

The survey enjoyed participation from across Victoria, with just under 40 per cent of parents reporting their child's school being located outside metropolitan Melbourne.

Of the 554 parents who identified the area where their child's school was located:

- 346 (62.5 per cent) were in metropolitan Melbourne
- 38 (6.9 per cent) were in Gippsland
- 35 (6.3 per cent) were in the Central Highlands Region
- 29 (5.2 per cent) were in the Goulburn region
- 27 (4.9 per cent) were in the Barwon region
- 24 (4.3 per cent) were in the East Gippsland region

The remaining 10 per cent were in the Ovens, Wimmera, Western Districts, Loddon and Mallee regions.¹³⁹⁰

¹³⁸⁸ 61 out of 612 participants (9.96 per cent). This is significantly lower than the whole school population. In Victoria 22.5 per cent of students are educated in Catholic schools.

¹³⁸⁹ Less than 2 per cent of participants.

¹³⁹⁰ Eighteen parents were from the Ovens region, 15 from Wimmera, 11 from Western District, 10 from Loddon and one parent was from the Mallee region.

Students

Sixty students took part in the online survey.

Ten students participated in the 'have a say' days.

No case studies were received from students.

Student survey

Among students participating in the survey:

- 36 were female
- 24 were male
- 12 students identified as being from a cultural or linguistically diverse background
- One student identified as Aboriginal or Torres Strait Islander.¹³⁹¹

Students were asked to self-identify their disability and could select more than one disability. The most common disabilities identified by students were physical disability, sensory disability, autism spectrum disorder and learning disabilities. This is quite different to the disability profile in the parent and educator surveys where autism spectrum disorder and intellectual disability were more frequently mentioned.¹³⁹²

Students identified:

- sensory disabilities (29 times)
- physical disabilities (23 times)
- autism spectrum disorder (14 times)
- learning disabilities (nine times)
- illness or medical conditions (six times)
- mental health disability (four times)
- language disorders (four times)
- acquired brain injury (three times)
- intellectual disability (twice)
- behavioural related disabilities (twice).¹³⁹³

1391 Sixty per cent were female, the inverse of the gender balance in the parents survey, where 70 per cent of parents were reporting the experiences of male students with disability.

1392 The low participation rate of students with intellectual disability was expected due to ethical considerations of consent and capacity.

1393 Three instances of multiple disabilities were reported. However, the range of disabilities listed suggests that at least some of the students who did not select multiple disabilities as an answer may have a combination of disabilities.

School type

Just under half of the students surveyed attend a government school.¹³⁹⁴ Of the 59 students who answered this question:

- 29 attend a government mainstream school
- 12 attend a state specialist school
- eight attend a Catholic mainstream school
- six attend an Independent mainstream school
- two students attend multiple schools (dual enrolment).

1394 No student participating in the survey attended Independent or Catholic specialist schools. Nor were any home schooled or engaged in distance education. Two students did not know which type of school they attended.

Appendix 2: 'Have a Say' day locations

No	'Have a say' day location	Date
1	Intellectual Disability – parents and students	11 February 2012
2	Bendigo – parents	22 February 2012
3	Bendigo – educators	22 February 2012
4	Traralgon – parents	27 February 2012
5	Traralgon – educators	27 February 2012
6	Ballarat – parents	29 February 2012
7	Ballarat – deaf students and parents	21 March 2012
8	Ballarat – educators	29 February 2012
9	Shepparton – parents	1 March 2012
10	Shepparton – post-school program	1 March 2012
11	Shepparton – Rumbalara Family Services	1 March 2012
12	Geelong – parents	16 March 2012
13	Geelong – educators	16 March 2012
14	School Council, Emerson Specialist School Dandenong	27 March 2012
15	Victorian College for the Deaf – parents, students and one teacher	29 March 2012
16	Culturally and Linguistically Diverse (CALD) critical friends group	28 March 2012
17	Victorian Aboriginal Disability Network critical friends group	3 April 2012

Appendix 3: Key informant interviews

No	Organisation	Date
1	Catholic Education Office Melbourne	4 June 2012
2	Disability Services Commission	6 June 2012
3	Independent Schools Victoria	6 June 2012
4	Office of the Senior Practitioner, Department of Human Services	18 June 2012
5	Student Wellbeing and Engagement Division, Department of Education and Early Childhood Development	19 and 25 June 2012

In addition, written responses to questions from the Commission were received from the Infrastructure and Finances Services Group (Transport), and the Operational Support Unit, Regional Support Division of the Department of Education and Early Childhood Development.

Appendix 4: Submissions

No.	Organisation
1	Disability Services Board
2	Julie Philips – Disability Advocate
3	Down Syndrome Victoria
4	Emmy Elbaum – Parent Advocate
5	Occupational Therapy
6	Parent
7	Disability Discrimination Legal Service
8	Mark Glascodine
9	Vision Australia
10	Autism Victoria (Amaze)
11	Speech Pathology Australia

Glossary

ABLES

Refers to the Abilities Based Learning and Support curriculum and teaching resource developed by the Department of Education and Early Childhood Development. ABLES is used to identify where a student is working at a level equivalent to the Victorian Essential Learning Standards (VELS) and to plan an appropriate curriculum for that student. It includes an online tool for assessing the learning needs of students with disabilities and links this to the development of an individual learning plan for the student, to be developed in partnership with the student support group. ABLES can also be used to monitor the student's progress and to generate specific teaching and learning strategies for the classroom.

Acquired brain injury (ABI)

An acquired brain injury, or ABI, is an injury to the brain that occurs after birth resulting in deterioration of a person's cognitive, physical, emotional or independent functioning.

Asperger's syndrome

People with Asperger's syndrome experience difficulty understanding and expressing emotions, have restricted interests and show repetitive behaviours. People with Asperger's syndrome usually have intelligence within the normal range.

Attention deficit hyperactivity disorder (ADHD)

A condition characterised by inability to regulate and maintain behaviour, often involving over activity and poor concentration. This can affect social relationships and academic work.

Autism spectrum disorder (ASD)

A group of developmental disorders with a similar pattern of behaviour in three key areas – communication, social interaction and imaginative thought. Includes autism, Asperger's syndrome and Pervasive Developmental Delay – Not Otherwise Specified (PDD-NOS). ASD may also coexist with other disabilities, including intellectual disability, speech and language disorders.

CALD

Culturally and linguistically diverse.

Cerebral palsy

The term cerebral palsy describes a range of conditions that affect muscle control, movement and posture. Cerebral palsy is caused by damage to the developing brain.

Child and Adolescent Mental Health Service (CAMHS)

A service to provide assessment and treatment for children and adolescents up to 18 years who are experiencing significant psychological distress and/or mental illness.

Cognitive impairment

The term cognitive impairment describes a wide variety of impaired brain function relating to the ability of a person to think, concentrate, react to emotions, formulate ideas, problem solve, reason and remember. Cognitive impairment can be associated with many disabilities and disorders that can be present at birth or acquired later in life.

Discrimination

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by law. In Victoria, a range of personal characteristics are covered by the law, including disability. Discrimination also includes imposing unreasonable requirements, conditions and practices that disadvantage, or could disadvantage, people with a particular personal characteristic, and failing to make reasonable adjustments in education, employment and the delivery of goods and services.

DEECD

Department of Education and Early Childhood Development, State Government of Victoria

Disability Standards for Education 2005

The Commonwealth *Disability Standards for Education 2005* clarify and make more explicit the obligations on schools and the rights of students under the *Disability Discrimination Act 1992*. The Standards cover enrolment; participation; curriculum development, accreditation and delivery; student support services and the elimination of harassment and victimisation.

Distance education

Distance education refers to education that is not based in a physical classroom. Teaching and learning programs can be delivered in many ways, including online, via disk or print. Contact methods can include phone, email, chat, bulletins or post.

Down syndrome

A genetic condition resulting from an extra chromosome, Down syndrome involves a range of physical characteristics, effects on health and development, and some level of intellectual disability.

Dual enrolment

Some children enrol at both a local primary school and a nearby specialist school and spend part of the week at each. This is known as dual enrolment. Some parents choose dual enrolment so that their child can benefit from the different experiences and resources that mainstream and specialist schools have to offer.

Dyslexia

Dyslexia is a language-based learning disability. Dyslexia refers to a cluster of symptoms, which result in people having difficulties with specific language skills, particularly reading. Students with dyslexia may experience difficulties in other language skills such as spelling, writing, and speaking.

Early Childhood Intervention Service (ECIS)

A service for children under the age of six with disability or developmental delay, administered by DEECD. ECIS includes flexible support packages for children with high support needs, parental support and education programs.

Educational authority

An educational authority means a body or person administering an educational institution.

Educational institution

An educational institution means a school, college, university or other institution at which education or training is provided.

Education provider

An education provider is a broad term used in the Disability Discrimination Act which means an educational authority, an educational institution, or an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers.

Education support officers / integration aide

Education support officers (referred to as integration aides in this report) assist teaching staff in kindergarten, primary and secondary schools in the preparation of teaching materials, general classroom non-teaching duties and providing support and assistance to students to meet their educational needs.

Educator

In this report, the term educator refers to school principals, assistant principals, classroom teachers, specialist staff such as physiotherapists and speech therapists, and education support staff such as integration aides.

Facilitated communication

Facilitated communication is a hands-on training technique, which aims to give people with a communication disability the skills to use communication aids effectively. Facilitated communication involves a person physically supporting the hand, wrist or arm of a person with a communication disability while the person spells out words on a communication device with their hand.

Independent school

Independent schools are both independent in their finances and governance. Many Independent schools provide a religious- or values-based education, while others promote a particular education philosophy or interpretation of mainstream education.

Individual learning plan (ILP)

An individual learning plan is a plan created by various stakeholders which takes in to account the curriculum level at which a child is ready to learn at, coupled with teaching and learning strategies that can be modified by teachers to suit individual student needs. The individual learning plan outlines what needs to be taught, priorities for the content to be taught, goals and appropriate pedagogies.

Language disorder

Commonly referred to as 'severe language disorder' (SLD) and also referred to as severe language impairment or severe language disability. It is defined as difficulty in acquiring the skills involved in understanding, processing, or expressing language to the extent that one is unable to participate fully, without special assistance, in the social and educational life of the school.

Learning disability

A disorder or malfunction which results in the person learning differently from a person without the disorder or malfunction.

Mainstream school

A government or private school where accommodations and adjustments can be made for children with disabilities throughout the educational program but are not considered specialist.

Mental health disability

Also known as a mental disorder or illness, is a health condition characterised by significant dysfunction in an individual's cognitions, emotions, or behaviours that reflect a disturbance in the psychological, biological, or developmental processes underlying mental functioning.

Obsessive-compulsive disorder

A severe anxiety disorder involving persistent intrusive thoughts or images (obsessions) and repetitive behaviour that is excessive and distressing (compulsions).

Pedagogy

Instructional ideas, strategies, skills and practices used to improve student outcomes.

Physical disability

A physical disability relates to the total or partial loss of a person's bodily functions and/or the total or partial loss of a part of the body.

Positive duty

The *Equal Opportunity Act 2010* introduced a positive duty requiring all organisations covered by the law – including education providers – to take reasonable and proportionate measures to eliminate discrimination. Instead of allowing schools to react to complaints of discrimination when they happen, the Act requires them to be proactive about discrimination and take steps to prevent discriminatory practices.

Program for Students with Disabilities (PSD)

The Program for Students with Disabilities is a Victorian Government funding program targeted to a defined student population with moderate to severe disabilities. Funds are provided to government schools.

Reasonable adjustments

The *Equal Opportunity Act 2010* requires schools to make reasonable adjustments, so that students with disabilities can participate in and derive substantial benefit from educational programs. The Act sets out that all relevant facts and circumstances should be taken in to account, as well as a test, regarding what schools should consider when thinking about whether or not an adjustment is reasonable. These include the effect on the person's ability to achieve learning outcomes and to participate in courses or programs, the financial impact of making the adjustment and the consequence of not making the adjustment.

Sensory disability

An impairment of one or more of the five senses often referred to in the context of a sight or hearing impairment, also inclusive of taste, smell and touch.

Specialist school

Specialist schools cater for children with a particular disability or specialise in different groups or types of disabilities. Specialist schools in Victoria cater for students with physical disabilities, autism spectrum disorder, intellectual disability or hearing impairments.

States parties

A state party is a state that has expressed its consent to be bound by an international treaty by an act of ratification, acceptance or approval, where that treaty has entered into force for that particular state. When we talk about states in this context we mean countries like Australia. This means that the treaty, under international law, binds the state. For example, when Australia ratifies an international human rights treaty such as the Convention on the Rights of the Child, it is a 'state party' with obligations under that treaty.

Student support group

A student support group is a cooperative partnership between the parent/guardian/carer(s), school representatives and professionals to ensure coordinated support for the student with disability and their educational needs. The student support group is central to making an application under the Program for Students with Disabilities and is mandatory for students in the Program for Students with Disabilities. A student support group is strongly encouraged for any student with additional needs.

Unjustifiable hardship

Section 11 of the Disability Discrimination Act provides that 'in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account'. An education provider may not have to carry out an obligation under the *Disability Standards for Education 2005* if that obligation would cause it unjustifiable hardship. The unjustifiable hardship terminology is not used in the Equal Opportunity Act. Instead, there is guidance on what to take into account to work out whether a measure is reasonable.

Victorian Essential Learning Standards (VELS)

The Victorian Essential Learning Standards (VELS) outlines what is essential for all Victorian students to learn during their time at school from Prep to Year 10. They provide a set of common state-wide standards which schools use to plan student learning programs, assess student progress and report to parents.

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