



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

---

# Issues Paper

## Education and learning

30 October 2019

Please be aware that the content and associated questions in this Issues Paper may be distressing or raise issues of concern for some readers.

There are a range of services available if you require support after reading this paper. Contact details for these services are located at the end of this paper under the heading 'Support to respond to this issue paper'.

## Introduction

Education and learning is a key area of inquiry for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission). It represents both a setting for violence, abuse, neglect and exploitation and an important component of a society that seeks inclusion for people with disability.

This issues paper has been adapted from a background paper that was prepared for an education and learning workshop that took place on 3 October 2019 with representatives from community and disability organisations and education academics. The paper:

1. Summarises two approaches which provide the foundation for the Royal Commission's consideration of education and learning in **Section 1**.
2. Outlines the Royal Commission's preliminary understanding of some of the key issues and barriers faced by people with disability in realising their right to education in **Section 2**.
3. Discusses the Royal Commission's Terms of Reference in the context of education and learning in **Section 3**.

Several questions are included in Section 3 to assist people wishing to provide contributions to the Royal Commission on the matter of education and learning.

## Section 1 – Foundations

The Letters Patent require the Royal Commission to take a human rights-based approach and an intersectional approach to its inquiry. An intersectional approach takes into account the combination of forms of oppression, hierarchies and power structures which interact in such a way that they are inseparable and expose people to unique experiences of disadvantage and discrimination.

The Royal Commission may also have regard to other approaches, including a life course perspective that examines people's lives, structural contexts and social change.

### 1.1 Human rights-based approach

The Letters Patent establishing the Royal Commission recognise that people with disability have the right to the full and equal enjoyment of all human rights and fundamental freedoms and that Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability under the *Convention on the Rights of Persons with Disabilities* (CRPD).

The right to education is well established in international human rights law.<sup>1</sup> The CRPD reaffirms and clarifies the right to education for people with disability, with Article 24 requiring States to ensure an inclusive education system at all levels. The understanding of Article 24 is guided by the general principles and the cross-cutting obligations of the CRPD,<sup>1</sup> including Article 7 on children with disability.

In 2016, the Committee on the Rights of Persons with Disabilities (CRPD Committee), released General Comment No.4 on the right to inclusive education, which sets out the CRPD Committee's interpretation of Article 24 and provides guidance on its implementation. The CRPD Committee has explained that inclusive education involves:

‘a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.’<sup>2</sup>

The CRPD Committee also distinguished inclusive education from integration and segregation. Integration is the ‘process of placing persons with disabilities in existing mainstream education institutions with the understanding that they can adjust to the standardized requirements of such institutions.’<sup>3</sup> Segregation occurs ‘when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.’<sup>4</sup>

## 1.2 Intersectional approach

The Letters Patent require the Royal Commission to consider the multi-layered experiences of people with disability that are influenced by experiences associated with age, sex, gender, gender identity, sexual orientation, intersex status, and ethnic origin or race. The Royal Commission must have regard to the particular situation of First Nations people with disability and culturally and linguistically diverse people with disability.

# Section 2 – Outline of issues and barriers

This section provides an outline of some of the key issues and barriers experienced by students with disability, based on preliminary research and review of past reports and inquiries, as well as information gathered from the Royal Commission's previous workshops. Many of the issues overlap and are interrelated. The Royal Commission will consider systemic and structural factors that cut across the issues and barriers, such as policy frameworks, funding and data collection. We welcome comment on additional issues and barriers not yet identified.

## 2.1 Access to education and learning

### Accessibility of education facilities (all stages)

People with disability may experience physical and environmental barriers in accessing education. Buildings, education materials and communication methods and tools may be inaccessible. For example,

---

<sup>1</sup> Obligations that must be taken into account in the interpretation and implement of each substantive article of the CRPD.

textbooks and online materials may not be in accessible formats and languages. These barriers are often more pronounced for students in regional, rural and remote areas.<sup>5</sup>

## **Early childhood education**

Students with disability in early childhood education face many of the same issues and barriers present in primary and secondary education. We welcome contributions on how these issues and barriers present in the context of early childhood education, as well as any unique issues and barriers.

Literature suggests that teachers, management and others in some early childhood settings discriminate against children with disability and seem to readily exclude them.<sup>6</sup> This highlights that children with disability and their families often have to deal with an education system that is not set up to cater for all, and this often leads to experiences of prejudice, exclusion and discrimination from the very beginning of learning.

## **Primary and secondary education**

### **Gatekeeping**

Gatekeeping refers to the formal denial of access or informal discouragement of children with disability attending their school of choice. This could include refusing to enrol a child with disability, only offering part-time hours, encouraging enrolment in segregated education settings or encouraging home-schooling. Research suggests significant levels of gatekeeping across Australia.<sup>7</sup>

### **Partial enrolment**

All States and Territories allow for exemptions to compulsory schooling of children,<sup>8</sup> and some States and Territories allow for 'flexible' or 'special' arrangements for students.<sup>9</sup> These provisions allow a child with disability to attend primary or secondary school on a part-time basis. There is a lack of consistent national data on the number of students with disability who attend school part-time.<sup>10</sup>

### **Segregation**

Over the last decade, the segregation of children with disability in special education units/classes or 'special' schools has increased.<sup>11</sup> Students with autism have been disproportionately affected by this increase in segregation.<sup>12</sup> First Nations students with disability are also disproportionately over-represented in special schools.<sup>13</sup>

### **Exclusion from school activities**

Students with disability may be excluded from school activities, such as excursions, assemblies, sports carnivals and other school activities.<sup>14</sup> This is likely to negatively impact on educational attainment as well as an individual's sense of belonging and community.

### **Suspensions and expulsions**

There is a lack of consistent national data on the suspension and expulsion of students with disability. Available data and research suggests that children with disability experience higher rates of suspension and expulsion from schools.<sup>15</sup>

## **Tertiary and further education**

The 'inherent requirements' of many university courses, technical, vocational or further education programs may exclude students with disability from these levels of education. Inherent requirements specify the essential requirements that a person must have in order to participate in the course, for

example, an ability to complete tasks that involve fine motor skills. There is considerable variation between the inherent requirements for the same courses across education providers.<sup>16</sup>

## 2.2 Appropriateness and adaptability of education and learning

### Lack of reasonable adjustments

The *Disability Discrimination Act 1992* (Cth) and Disability Standards for Education 2005 (Education Standards) require education providers to make reasonable adjustments to assist students with disability to participate in education on the same basis as other students.<sup>17</sup> However, students with disability do not always receive the adjustments they require to participate in learning.<sup>18</sup> Past reviews of the Education Standards have recommended the development of guidance documents to support consistent implementation of reasonable adjustments.<sup>19</sup>

### Lack of individualised supports and planning

In addition to reasonable adjustments, students with disability may require individualised support measures to fully and effectively participate in learning.<sup>20</sup> The Education Standards do not mandate nor provide guidance on the provision of individualised supports. They also do not address individualised or personalised learning plans.<sup>21</sup>

Transition between stages of education often represent periods when additional supports may be required to ensure an effective and smooth transition.

### Inflexible curricula

Education curricula may not allow teachers flexibility to design education and learning for the variety of student learning needs. Currently, Australia does not have a national approach to modifying curricula for students with disability.<sup>22</sup>

### Lack of culturally responsive teaching

Inclusive education requires respect for diversity, including cultural diversity.<sup>23</sup> The Education Standards do not directly address the intersectional nature of the barriers some students with disability experience, including First Nations students and culturally and linguistically diverse students with disability.

### Workforce capability issues

The capability and skills of school staff, particularly teachers, are critical to providing students with disability with quality and inclusive education. However, there are concerns that many teachers do not receive appropriate education or training to enable them to provide inclusive education.<sup>24</sup>

### Behaviour management

Approaches to responding to and addressing behaviours of concern are often inappropriate and ineffective, as demonstrated by the use of restrictive practices (discussed in Section 3) and the high rates of suspension and expulsion. Good practice models for responding to behaviours of concern and supporting students with disability emphasise the need for holistic, proactive, preventative and trauma-informed approaches.<sup>25</sup>

# Section 3 – Terms of reference

## 3.1 Violence, abuse, neglect and exploitation

People with disability may be subject to many forms of violence, abuse, neglect and exploitation in education and learning environments. The Royal Commission will consider the nature and extent of violence, abuse, neglect and exploitation in education and learning, and inquire into whether particular forms of violence, abuse, neglect and exploitation are more prevalent.

**Attachment A** sets out the Royal Commission’s working definitions of violence, abuse, neglect and exploitation. Violence and abuse include the use of constraints, restrictive practices and seclusion. Violence and abuse also include humiliation and harassment, and significant violations of dignity on a systemic or individual basis. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life, including education.

Previous inquiries have highlighted the prevalence of bullying and harassment of students with disability.<sup>26</sup> Research and inquiries also suggest that restraints and seclusion continue to be used in Australian schools, despite calls for these to end.<sup>27</sup>

1. Are particular forms of violence, abuse, neglect or exploitation more **prevalent** in education and learning environments?
2. Does the **extent or nature** of violence, abuse, neglect or exploitation of people with disability **vary** between:
  - a. Stages of education and learning (i.e. early childhood, primary, secondary, tertiary, further education)?
  - b. Settings of education and learning (i.e. inclusive, integrated or segregated)?
  - c. States or Territories?
  - d. Government, Catholic or Independent education systems?
3. Taking an **intersectional approach**, how do the specific experiences of violence, abuse, neglect and exploitation vary amongst students in education and learning environments?
4. What are some of the **underlying causes** of the issues and barriers (outlined in Section 2)? How do these issues and barriers **link to** or **influence** the experiences of violence, abuse, neglect or exploitation by people with disability in education and learning environments?

5. What measures and mechanisms **prevent** violence, abuse, exploitation and neglect of students with disability in education and learning environments? What role does or could inclusive education play in preventing violence, abuse, neglect and exploitation in society?
6. Do you have any experiences that illustrate any of these matters?

Particular cases of violence, abuse, neglect or exploitation in education and learning can be brought to the Commission's attention by making a submission via the Commission's [website](#).

## 3.2 Reporting, investigating and responding to violence, abuse, neglect and exploitation

The Royal Commission will explore the adequacy of: (i) the mechanisms available to students with disability and their parents or guardians to identify, disclose and report instances of violence, abuse, neglect or exploitation; (ii) the procedures for investigation; and (iii) responses to instances of violence, abuse, exploitation and neglect of students with disability.

7. What barriers or impediments are there to **identifying, disclosing and reporting** violence, abuse, neglect or exploitation in education and learning settings?
8. What barriers or impediments are there to adequately **investigating** violence, abuse, neglect or exploitation in education and learning settings?
9. Are there **good practice** examples that encourage reporting, effective investigation and responses to violence, abuse, neglect or exploitation in education and learning settings?

## 3.3 Education and inclusive societies

Education has been characterised as a 'bridging' or 'multiplier' right, enabling individuals to benefit from and claim other rights, such as those related to work, housing, political participation and access to justice. The Royal Commission will consider the link between inclusive education and an inclusive society, which supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Evidence suggests there is a link between inclusive education and social inclusion in the areas of education, employment and living in the community.<sup>28</sup> Research also demonstrates there is 'clear and consistent evidence that inclusive education settings can confer substantial short- and long-term benefits for students with and without disabilities.'<sup>29</sup>

10. What has prevented Australia from complying fully with its **obligations in Article 24** of the CRPD? What **needs to change** within
  - a. Commonwealth, State and Territory governments,

b. schools and communities, and

c. individual classrooms, to ensure an inclusive education system at all levels?

11. What is essential to facilitate the **transition** from segregated or integrated settings to inclusive education settings, and to sustain the change?

12. What is the impact of inclusive education on the **life course outcomes** (including learning and employment outcomes) of students with disability? And students without disability?

13. How does inclusive education **promote a more inclusive society**?

## Responses to this issues paper

Responses to this issues paper should be provided either:

- electronically to [DRCEnquiries@royalcommission.gov.au](mailto:DRCEnquiries@royalcommission.gov.au), or
- in writing to GPO Box 1422, Brisbane, Queensland 4001.

Please provide your responses, if possible, **by 20 December 2019**, although submissions will be accepted after that date.

Please indicate if you consent to your responses being made public on our website.

## Support to respond to this issues paper

Blue Knot Foundation offers specialist counselling support and a referral service for anyone affected by the Disability Royal Commission.

For support please call their national hotline on **1800 421 468** (they are open every day).

In addition to the Blue Knot Foundation, the Australian Government provides support to assist people to engage with the Royal Commission. This support includes:

- free legal advisory services provided by National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services through the Your Story Disability Legal Service
- advocacy support services provided under the National Disability Advocacy Program.

Further information about these supports, including how to access them, is available on our website:

[disability.royalcommission.gov.au/counselling-and-support](http://disability.royalcommission.gov.au/counselling-and-support).

# Attachment A – Definitions

The Royal Commission has provisionally defined key terms as follows:

- **Violence and abuse** – include assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis.
- **Neglect** – includes physical and emotional neglect, passive neglect and wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment.
- **Exploitation** – means the improper use of another person or the improper use of or withholding of another person’s assets, labour, employment or resources including taking physical, sexual, financial or economic advantage.

---

<sup>1</sup> *Universal Declaration of Human Rights* article 26; *International Covenant on Economic, Social and Cultural Rights* articles 13 and 14; *Convention on the Rights of the Child* article 28; *Convention on the Elimination of All Forms of Discrimination against Women* article 10; *International Convention on the Elimination of All Forms of Racial Discrimination* article 5(v); and *Declaration of the Rights of Indigenous People* article 14.

<sup>2</sup> Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [11].

<sup>3</sup> Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [11].

<sup>4</sup> Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [11].

<sup>5</sup> Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability](#).

<sup>6</sup> Bernadette Christine Macartney, 'Disabled by the discourse: Some impacts of normalising mechanisms in education and society on the lives of disabled children and their families' (2008) *New Zealand Research in Early Childhood Education* 11, 137-148.

<sup>7</sup> Shiralee Poed, Kathy Cologon and Robert Jackson 'Gatekeeping and restrictive practices with students with disability: results of an Australian survey' (Report, October 2017); Monash University, Castan Centre for Human Rights Law, *Improving Educational Outcomes for Children with Disability in Victoria* (Final Report, June 2018) [Improving Educational Outcomes for Children with Disability in Victoria](#).

<sup>8</sup> *Education Act 2004* (ACT) ss 11G, 12A; *Education Act 1990* (NSW) ss 20, 25; *Education Act 2015* (NT) s 51; *Education (General Provisions) Act 2006* (Qld) ss 185, 420; *Education Act 1972* (SA) s 81A; *Education Act 2016* (Tas) s 13; *Education and Training Reform Act 2006* (Vic) s 2.1.5, *Education and Training Reform Regulations 2017* (Vic) regs 19, 20.

<sup>9</sup> *Education (General Provisions) Act 2006* (Qld) s 182; *Education Act 2015* (NT) ss 52, 125; *Education (General Provisions) Act 2006* (Qld) ss 182, 183; *Education Regulations 2012* (SA) regulation 44; *Education Act 2016* (Tas) ss 11, 17, 18; *Guidelines for Partial Enrolment for Registered Home Schooled Student*.

<sup>10</sup> Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability \(Report, 15 January 2016\)](#).

<sup>11</sup> Australian Institute of Health and Welfare, *Disability in Australia: Changes over Time in Inclusion and Participation in Education* (Report, 2017) [Disability in Australia: Changes over Time in Inclusion and Participation in Education](#).

<sup>12</sup> Kate de Bruin, 'The Impact of Inclusive Education Reforms on Students with Disability: An International Comparison' (2019) 23(7–8) *International Journal of Inclusive Education* 1, 5–6.

<sup>13</sup> Linda Graham, 'Disproportionate over-representation of Indigenous students in New South Wales government special schools' *Cambridge Journal of Education* (2012) 42(2), 163-176.

<sup>14</sup> Senate Standing Committee on Community Affairs, 'Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability' (Report, 25 November 2015) [Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability](#).

<sup>15</sup> Linda Graham, 'Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms: A Queensland case-study' *International Journal of Inclusive Education* 1-21; Toni Beauchamp, Uniting Care, *Addressing high rates of school suspension – Policy Paper* (2012) [Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms: A Queensland case-study](#).

<sup>16</sup> Urbis, *2015 Review of the Disability Standards for Education 2005* (Final Report, 17 July 2015) 21 [2015 Review of the Disability Standards for Education 2005](#).

<sup>17</sup> *Disability Standards for Education* (2005).

<sup>18</sup> Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Senate Education and Employment References Committee, Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability](#).

<sup>19</sup> Urbis, *2015 Review of the Disability Standards for Education 2005* (Final Report, 17 July 2015) vii, 3 [2015 Review of the Disability Standards for Education](#).

<sup>20</sup> *Convention on the Rights of Persons with Disabilities* article 24(2)(e).

- 
- <sup>21</sup> Urbis, *2015 Review of the Disability Standards for Education 2005* (Final Report, 17 July 2015) v [2015 Review of the Disability Standards for Education](#).
- <sup>22</sup> Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Senate Education and Employment References Committee, Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability](#).
- <sup>23</sup> Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [12(e)].
- <sup>24</sup> Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Senate Education and Employment References Committee, Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability](#) .
- <sup>25</sup> National Council on Disability, *IDEA Series – The Segregation of Students with Disabilities* (Report, 7 February 2018) [National Council on Disability, IDEA Series – The Segregation of Students with Disabilities](#) ; Jacinta Evans, *To investigate best practice in managing violent behavior in schools, including preventative programs* (Research Paper, Winston Churchill Memorial Trust of Australia, August 2018). [To investigate best practice in managing violent behavior in schools, including preventative programs](#) .
- <sup>26</sup> Senate Standing Committee on Community Affairs, ‘Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability’ (Report, 25 November 2015) [Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability](#).
- <sup>27</sup> Senate Standing Committee on Community Affairs, ‘Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability’ (Report, 25 November 2015) [Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability](#); Commonwealth of Australia, Senate Education and Employment References Committee, *Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability* (Report, 15 January 2016) [Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability](#).
- <sup>28</sup> European Agency for Special Needs and Inclusive Education, *Evidence of the link between inclusive education and social inclusion: A review of the literature* (Report, 2018) [European Agency for Special Needs and Inclusive Education, Evidence of the link between inclusive education and social inclusion: A review of the literature](#) .
- <sup>29</sup> Thomas Hehir, Todd Grindal, Brian Freeman, Renée Lamoreau, Yolanda Borquaye and Samantha Burke, ‘A Summary of the Evidence of Inclusive Education’ (Report, August 2016) [A Summary of the evidence on inclusive education](#)



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