

In the matter of the *Commissions of Inquiry Act 1950* (Qld)

Established by Letters Patent dated 4 April 2019 (Cth) and 27 June 2019 (Qld)

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

**OUTLINE OF SUBMISSIONS ON BEHALF OF THE STATE OF QUEENSLAND IN
RESPONSE TO PUBLIC HEARING 7**

A. BACKGROUND

1. The State of Queensland provides these submissions in response to the submissions of Counsel Assisting the Royal Commission dated 1 April 2021 regarding Public Hearing 7: *Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts.*

2. In response to a number of the matters raised throughout Public Hearing 7 and in Counsel Assisting's submissions, the State of Queensland repeats and relies on the information provided in response to:
 - (a) Oral evidence of Christopher Lassig provided at Public Hearing 7 in response to notice QLD-STA-00011;
 - (b) Written statement of Christopher Lassig dated 25 March 2020, provided in response to notice QLD-NTG-00015;
 - (c) Response to questions taken on notice by Christopher Lassig provided to the Royal Commission on 30 October 2020;
 - (d) Oral evidence of Deborah Dunstone provided at Public Hearing 2 in response to notice QLD-STA-00001;
 - (e) Written statement of Deborah Dunstone dated 14 October 2019 provided in response to notice Q-NTG/00004;
 - (f) Documents provided to the Royal Commission on 12 and 18 October 2019 respectively, in response to notice Q-NTP/0001; and

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- (g) Documents provided to the Royal Commission on 7 October 2020 in response to notice QLD-NTP-00041.
3. A critically important piece of work is the recent review of the *Disability Standards for Education 2005 (DSE)*, undertaken in 2020 by the Australian Department of Education, Skills and Employment (**the 2020 DSE review**).¹ The review occurs cyclically every 5 years. The bespoke process involved:
- “Consultation with national peak disability and education bodies informed the approach taken for the Review, which put the lived experiences of people with disability and their families at the centre. The intersectional factors that can affect students with disability were acknowledged. The Review had a focus on the experiences of Aboriginal and Torres Strait Islander students and their families. It was also undertaken during the COVID-19 pandemic”.*
4. Appendix B to the *Disability Standards for Education 2005 – 2020 Review: Final Report* (the report) details the exhaustive consultation which occurred with relevant Commonwealth, State and Territory Governmental bodies, and the disability and Indigenous sectors. It is notable that this Royal Commission was also privy to the consultative process.
5. The Royal Commission’s Terms of Reference explicitly indicate that other relevant reports and inquiries are to be considered. There were two areas within the DSE which it was decided required amendment to:
- “support the effectiveness of the Standards in achieving their objects”; first, clarification of expectations for consultation, issues resolution and complaints handling processes, and, second, inclusion of early childhood education and care (ECEC) within the Standards. However, most findings relate to awareness, understanding and implementation of the Standards.”*
6. It is submitted that these, and other, observations and recommendations are largely synonymous with the subject matter traversed by Counsel Assisting. The release of the report post-dates the oral and written evidence provided for the purpose of Public Hearing 7. The submissions below will highlight some of these where relevant but generally, where there is any overlay, it is submitted that the form of the 2020 DSE review recommendations be preferred, for reasons including process, consultation and practicability.

¹ The final report was released on 12 March 2021 and is publicly available online at: <https://www.dese.gov.au/disability-standards-education-2005/2020-review-disability-standards-education-2005/final-report>.

B. SCOPE OF THE SUBMISSIONS

7. Counsel Assisting's submissions are intended to address the main issues and themes emerging from the consideration of the totality of the evidence heard during Public Hearing 7.
8. Counsel Assisting have used the term 'educational neglect' as a key term in the submissions to encompass circumstances where Counsel Assisting consider education providers or educators fail to:
 - (a) ensure or facilitate equitable access to a quality, safe and inclusive education for students with disability;
 - (b) provide appropriate adjustments or supports for students with disability;
 - (c) adequately respond to mistreatment of students with disability.
9. Counsel Assisting have not asked the Commissioners to make factual findings in relation to the experiences of individual witnesses or members of their families² relevant to the State of Queensland, yet submit there is "compelling evidence" to support this. Whilst Counsel Assisting submit there was compelling evidence, the Royal Commission only heard evidence from a limited range of stakeholders and their personal experiences. There was no evidence before the Royal Commission that would support a conclusion that the evidence of those families reflects the experience of the broader cohort of students with disability in Queensland schools.
10. Given that indication, the basis for findings urged upon the Royal Commission are opaque. There is no explicit grounding in the evidence, oral or written, or documents produced (whether as exhibits or pursuant to compulsory notices) or submissions received.
11. The oral evidence is traversed in short form and is not necessarily reflective of the totality of the evidence. Some specific examples will be referenced below, and it should not be assumed that all have been addressed given the constraints in time to respond.
12. Counsel Assisting's submissions make a number of proposed 'Immediate Recommendations', together with a number of 'Possible Future Recommendations', to be considered once the States and Territories have had an opportunity to provide

² Counsel Assisting submissions, [17].

evidence and input regarding same.³ In the limited time available, and noting the State of Queensland has not been asked to provide evidence in relation to a number of the Possible Future Recommendations, the scope of these submissions will be limited to the proposed Immediate Recommendations only. The State of Queensland reserves its right to further respond to Counsel Assisting's possible future recommendations if and when required.

13. It is also notable that the recommendations seek to bind all States and Territories and non-government schools. However, of the States and Territories, only Queensland and New South Wales were given leave to appear. The mandatory language in which the recommendations are couched underscores the need for procedural fairness. Notwithstanding Queensland was given leave to appear, none of the recommendations were specifically put to Queensland agencies for comment as to the substance nor implementation.

C. GENERAL SUBMISSIONS

14. The Queensland Department of Education (**DoE**) understands the importance of individuals and families having the opportunity to tell their stories to the Royal Commission. That said, much of the evidence of the lived experience witnesses cannot be tested because it would be impossible for DoE to properly respond to perceived issues that occurred, in some instances, over 10 years ago.
15. The State of Queensland queries the evidentiary basis upon which some of the recommendations have been raised, particularly in circumstances where none of the proposed recommendations have been put to any witnesses or Queensland government departments. Additionally, it is submitted that there are instances whereby evidence has not been appropriately contextualised and instances where proposed recommendations fail to take into account evidence that is available to the Royal Commission.⁴ Nor is there any appropriate balancing of competing issues in the submissions.
16. For instance, at only footnote 350, Counsel Assisting acknowledge that schools are workplaces and, as such, are subject to occupational health and safety legislative regimes which impose various duties on employers (and others, including workers) to ensure, so far as reasonably practicable, the health and safety of workers, and others at a workplace. Counsel Assisting went on to acknowledge that policies with respect

³ Counsel Assisting submissions, [13].

⁴ See, for example, the material produced in response to compulsory notices referred to at paragraph 2 above.

to suspensions and exclusions, in respect of behaviour that involves risk of harm to person/s, must comply with those statutory duties.

17. In this regard, the State of Queensland notes that in Kobe's case, his own treating psychiatrist recommended initiating a school lockdown and calling 000 in the event Kobe was demonstrating unsafe behaviours.⁵ Accordingly, it is submitted that the decision to lock Kobe's school down was a clinically appropriate and proportionate response, particularly having regard to Queensland occupational health and safety requirements. This is particularly so in circumstances where schools owe a duty of care to ensure the safety of other students.
18. The oral evidence of Christopher Lassig regarding the reduction in suspensions and exclusions for Positive Behaviour Learning (**PBL**) schools highlights a further example. His evidence was that PBL is having a positive impact in terms of engagement, as indicated through reduction in SDAs and suspensions and exclusions. Further, there are a group of secondary schools in Queensland implementing PBL and their data is showing a significant drop in their suspensions and their exclusions for all students, and specifically for students with disability.⁶

D. SUBMISSIONS IN RESPONSE TO PROPOSED FINDINGS

Bullying

19. Counsel Assisting submit the Royal Commission should find that DoE does not collect Statewide data on bullying.⁷ Further, Counsel Assisting submit that they ought to collect, and publicly report, State-wide, disaggregated data on reported incidents of "bullying".
20. There is no definition of "bullying" and "harassment", nor the distinction between them in the submissions of Counsel Assisting. This is problematic for two reasons – the first is there is nothing which indicates what would be caught within the definition. This is so in circumstances where bullying and harassment is subjective in nature thus the reporting and subsequent available data will likely vary between Queensland schools.
21. The second is a "finding" that "information" before the Royal Commission "demonstrates the existence" of bullying and harassment but there is nothing further identified. Whilst some lived experience witnesses are quoted along with advocates, this would not found a proper conclusion that both exist. The State of Queensland

⁵ Transcript of proceedings, 14 October 2020, p-206, [20]-[25].

⁶ Transcript of proceedings, 16 October 2021, p-413, [20].

⁷ Counsel Assisting submissions, [99].

submits that the collection of meaningful and reliable data regarding reportable bullying incidents would be challenging for DoE as bullying is not presently defined in Queensland or Commonwealth legislation.

22. Further, fundamental issues arise such as whether or not reported or substantiated complaints are sought to be included. Nor would it contextualise challenging behaviour by children who, as a result of their “disability”, may be both a complainant and respondent to complaints of bullying.

Adjustments for students with disability

23. Counsel Assisting refer to “adjustments” being made for students with disability, both as a legal entitlement and, if not provided, this can amount to “educational neglect”.
24. Evidence is pointed to as supporting a proposition that there are difficulties consistently identifying, planning and providing reasonable adjustments for students with disability.⁸ However, such a proposition is posited on one example by a lived experience witness. A further example can be found in Yarraka Bayles’s evidence. Ms Bayles identified that Quaden required significant supports, including two Indigenous male support workers, to enable him to return to school full-time. It is understood, from Ms Bayles’ oral evidence, that DoE worked with Ms Bayles to provide the necessary supports to enable Quaden to return to school.⁹
25. DoE refers to the DSE when providing reasonable adjustments under section 3.4 of the DSE, which requires schools to take into account a wide range of issues including: the views of the student or the student’s associate; the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students; and the costs and benefits of making the adjustment.
26. Counsel Assisting submit the Royal Commission can find that DoE does not have a specific policy that requires the voice of students with disability to be taken into account in respect of decisions regarding the provision of adjustments and supports.¹⁰ Counsel Assisting therefore submit that DoE ought to review its procedures, policies and guidelines to ensure the policies require close consultation with students with disability.
27. In this regard, the State of Queensland notes recommendations 1, and 2 arising out of the 2020 DSE review. Recommendation 1 calls on the Australian government to

⁸ Counsel Assisting submissions, [102].

⁹ Transcript of Proceedings, 12 October 2021, p-33 – p-34, [45] – [5].

¹⁰ Counsel Assisting submissions, [117].

co-design information products on the DSE adopting a nationally consistent approach. Further, recommendation 2 of the 2020 DSE review recommends the DSE are amended to include principles on consultation, issues resolution and complaints handling. Once amended, the DSE will impose a legal obligation on education providers and should form the basis of all policy and procedure amendments as well as professional development.

28. DoE committed to implement Recommendation 4-6 of the 2017 Deloitte *Review of education for students with disability in Queensland state schools (Deloitte review)*, namely, improving parent and student engagement. All DoE policies, procedures and guidelines now require schools to consult parents and, if appropriate, students in relation to reasonable adjustments. However, in some instances, the *Education (General Provisions) Act 2006 (Qld) (EGPA)* requires consent from a parent in addition to consultation with the student. For instance, when considering flexible arrangements for students, ss 182 and 183 of the EGPA prohibits the chief executive and/or an authorised entity from approving the arrangements unless:

- (a) if the student is of compulsory school age---
- (i) a parent of the student has given written agreement to the arrangements; and
 - (ii) the authorised entity/chief executive has discussed the arrangements with the student to the extent the authorised entity/chief executive considers appropriate, having regard to the student's age and other relevant circumstances.¹¹

29. It is important that future work on consultation aligns with the amended DSE as recommended in the 2020 DSE review and the provisions of the EGPA.

Disciplinary procedures

30. Counsel Assisting submit the Royal Commission should find that the existing disciplinary procedures in Queensland provide insufficient express direction and guidance about how educators can ensure compliance with the *Disability Discrimination Act 1992 (DDA)* and the DSE.¹² To that end, Counsel Assisting submit that DoE review and amend their disciplinary procedure documents to ensure that

¹¹ See *Education (General Provisions) Act 2006*, s 182(3)(a).

¹² Counsel Assisting submissions, [158].

they provide express direction and guidance about how to ensure compliance with the DDA and the DSE.

31. In determining whether to take disciplinary action, principals in Queensland schools are required to adhere to Chapter 12 of the EGPA in addition to the *Student Discipline Procedure*¹³ and the *Principal guidelines – Student discipline*.¹⁴
32. The current *Student Discipline Procedure* provides both information links to the DDA and the DSE. However, in January 2023, DoE will undertake a procedural review of its policies and procedures. Review and amendment of the *Student Discipline Procedure* can be explored as part of this process. Additionally, DoE are currently developing new resources to ensure decisions are made in compliance with the principles of the *Human Rights Act 2019* (Qld).

Gatekeeping

33. Counsel Assisting submit that the Royal Commission can find that processes for re-enrolling children after expulsion in Queensland do not encourage immediate re-engagement, can be ineffective in overcoming reluctance from a school to accept an enrolment, and are not addressed in a specific policy or procedure.¹⁵ It is further submitted that DoE ought to review its processes for re-engaging and re-enrolling children after exclusions, with a view to ensuring students with disability are effectively supported to re-engage and re-enrol in school as soon as possible, and develop a specific policy or procedure to improve outcomes for students with disability in this regard.
34. Pursuant to s 156(1) of the EGPA, Principals must enrol the prospective student at the school if the prospective student is entitled, under the EGPA, to be enrolled at the school unless an exemption in ss 156(1A), 156(2) or 156(3) applies.
35. The *Student Discipline Procedure* provides guidance with respect to the enrolment of students in Queensland schools. DoE also appoints a dedicated Regional Case Manager in each region for students who have been excluded from school. As above, a review of the *Student Discipline Procedure* can be explored as part of DoE's procedural review in 2023.

¹³ Exhibit 7-167.15; QLD.9999.0048.0057.

¹⁴ EXP.0047.0001.0145.

¹⁵ Counsel Assisting submissions, [199]-[206].

Education Adjustment Program

36. Counsel Assisting submit that the Royal Commission should find that there remains confusion at the school level as to how funding can and should be used as a result of the Education Adjustment Program (**EAP**) process, and that the existence of categories suggests a threshold must be met before support can be provided. It was therefore submitted that the Royal Commission recommend that Queensland moves away from the EAP, to a non-categorical resourcing model as soon as possible, but within 12 months and that, in the meantime, clear direction is provided to DoE staff clarifying the misconception about how the current EAP model is to operate.
37. The Deloitte review recommended that DoE consider resourcing for students with disability within the broader context of total school resourcing and in light of the proposed directions for NCCD. It was said that resourcing arrangements should aim to support more targeted allocations informed by educational need across different settings.¹⁶
38. DoE has committed to implementation of this recommendation and has commenced by undertaking a jurisdictional analysis, and scoping options to undertake the resource allocation review.
39. In 2019-20, DoE allocated \$1.159 billion to support students with disability with \$775,000,000 allocated to the 'Students with Disability Funding Model' and \$337,600,000 to Whole School Support – Student Learning Resource (**WSS-SLR**).
40. The EAP is one element of the resources provided to school for students with disability. All State primary and secondary schools receive a core allocation of teachers and teacher aides based on student enrolments including enrolments of students with disability. The EAP is used to allocate 75% additional teachers and teacher aides to state primary and secondary schools under the Students with Disability funding model.¹⁷
41. Schools are also allocated funding under the Investing for Success funding and other resources under the WSS-SLR and are able to access a wide of specialist supports from regional and central offices including therapists, principal advisors autism and inclusion coaches.

¹⁶ See recommendation 6-3 of Deloitte's review of education for students with disability in Queensland state schools.

¹⁷ See written statement of Deborah Dunstone (Exhibit 2-001), paragraphs 19 – 28 and Exhibits H, I and J.

42. The State of Queensland submits that in its present form, Counsel Assisting's proposed recommendation places a narrow focus on a resource allocation review. The State of Queensland further submits that the term 'non-categorical' requires further exploration by the Royal Commission. It is submitted there will always be a need to provide resources with some reference to 'categories' (e.g. the intensity and frequency of adjustments as used in the NCCD).
43. It is submitted that Counsel Assisting's recommended timeframe of 12 months is unrealistic. The recommended timeframe presents significant risks for DoE in ensuring the future funding model is robust, fair, supported by effective systems and professional development, and does not lead to undesirable and unintended consequences. For instance, a jurisdictional analysis undertaken by DoE in preparation for the Deloitte review indicated that such reviews can take up to two years to complete, followed by an additional transition period, in larger States and Territories.
44. It is estimated that a full review, implemented with fidelity, will take approximately two years to complete followed by a further transition period.
45. Further, it is submitted that it is critical that the timing of the new funding model aligns with the beginning of the school year to enable schools to be ready to support students using the new funding model from day one of the school year. It is also critical that stakeholders, including students, parents and staff within schools, have the opportunity to provide input into the future funding model.

Restrictive practices

46. Counsel Assisting submit the Royal Commission ought to recommend that DoE revise its Restrictive Practices Procedure, and consider whether, and to what extent, mandatory reporting obligations should be expanded beyond that for which it currently provides.
47. The *Restrictive Practices Procedure*¹⁸ is a new procedure, implemented by DoE in January 2020. Principal Advisors have been appointed in each region across Queensland to assist with the implementation and change of culture generally. As above, a review of the *Restrictive Practices Procedure* can be explored as part of DoE's procedural review commencing in 2023.

¹⁸ Exhibit 7-174.07.

Teacher training

48. Counsel Assisting submit that it is open for the Royal Commission to find that DoE does not require school principals to undertake specific mandatory training about the provision of adjustments, decisions about funding and resource allocation for students with disability and legislative requirements under the DDA and DSE, but it should require them to do so. It is further submitted that the Royal Commission recommend that all school principals undertake specific training with respect to the education of students with disability as soon as possible, but within 12 months. It is submitted that the training should be a condition of appointment to the role of principal.
49. In this regard the State of Queensland refers the Royal Commission to Recommendations 4 and 5 of the 2020 review of the DSE. These recommendations provide a nationally consistent approach to ensuring schools across all sectors have a consistent understanding of the DSE by developing information for education providers, reviewing and expanding the current exemplars of practice, to ensure all school teachers and leaders have appropriate training on the DSE (taking into account teacher registration processes) and ensuring induction processes for graduate teachers have an appropriate focus on the DSE.
50. It is further noted that DoE has implemented all recommendations arising out of the following matters raised by the 2017 Deloitte review:
- (a) Legislative and policy awareness¹⁹
 - (b) Expectations relating to education delivery²⁰
 - (c) Publishing exemplars of good practice in making reasonable adjustments and inclusive education²¹
 - (d) Delivered training to support the new Behaviour Management Procedure²²
 - (e) Delivered training to support the new Restrictive Practices Procedure²³
 - (f) Delivered training on using resources for students with disability²⁴.

¹⁹ See 2017 Deloitte *Review of education for students with disability in Queensland state schools*, section 4.1.

²⁰ *Ibid*, section 4.2.

²¹ *Ibid*, section 4.6.

²² *Ibid*, section 5.2.

²³ *Ibid*, section 5.3.

²⁴ *Ibid*, section 6.2.

51. State schools and regional staff are able to access a wide range of training and supports delivered through different channels requiring these elements including access to tools relating to the DSE, access to best practice guidelines in making adjustments in accordance with the NCCD and masterclasses on funding allocations.
52. While it is conceded some training is not mandatory, Principals are currently required to complete mandatory training such as the Management Foundations program which focuses on the ethical use of resources, together with the Queensland Government's Code of Conduct for the Queensland Public Service and the Code of Conduct.
53. Having regard to Counsel Assisting's submissions, DoE does not consider it is possible, nor desirable, to develop a suite of new training and professional development resources for DoE staff within 12 months. The Australian Government, together with the States and Territories, are presently considering the recommendations arising out of the 2020 DSE review but, in any event, it is submitted that 12 months is insufficient to undertake critical stakeholder consultation and to build and implement the proposed training programs to ensure DoE staff fully understand their obligations and responsibilities under both the DSE and DDA in the manner contemplated by Counsel Assisting.

E. CONCLUSION-SUMMARY

Royal Commission's proposed immediate recommendations	Comment	Relevant 2017 Deloitte Review/2020 DSE Review Recommendation
Bullying	<p>Further exploration of policy amendments and resource investment would need to occur prior to the introduction of Statewide reporting mechanisms as there is currently no data collection system that would enable same.</p> <p>It is estimated that a timeframe of three to four years would be required to introduce such systems once bullying is defined.</p>	
Adjustments for students with disability	Implementation of this recommendation in its present form may require changes to the EGPA.	<p>Recommendations 4-6 and 5-1 of the 2017 Deloitte Review.</p> <p>Recommendations 1 and 2 of the 2020 DSE Review.</p>

Royal Commission's proposed immediate recommendations	Comment	Relevant 2017 Deloitte Review/2020 DSE Review Recommendation
Exclusionary discipline	The enrolment, discipline and exclusion of students is governed by the EGPA and the <i>Student Discipline</i> procedure. Legislative amendments to the EGPA may be required to implement the Royal Commission's proposed recommendation.	Recommendation 5-2 of the 2017 Deloitte Review.
Gatekeeping	The enrolment, discipline and exclusion of students is governed by the EGPA and the <i>Student Discipline</i> procedure. Legislative amendments to the EGPA may be required to implement the Royal Commission's proposed recommendation.	Recommendations 4-1 and 4-5 of the 2017 Deloitte Review.
Funding for students with disability	<p>Schools are provided with, and can access a range of resources, to make adjustments for students with disability.</p> <p>The Education Adjustment Program is one element of the resource model.</p> <p>Work is presently underway to review the resource allocation model, which includes the EAP verifications.</p> <p>Based on the experiences in other states and territories, a review undertaken with fidelity will take up to 2 years to complete followed by a transition period.</p>	Recommendation 6-3 of the 2017 Deloitte review.
Restrictive practices	Queensland published its first Restrictive Practices Policy in January 2020. Revision of the policy can be considered in the procedural review commencing in 2023.	Recommendation 5-3 of the 2017 Deloitte Review.
Teacher resourcing and training	School staff are already required to complete a broad range of mandatory training and there are a range of non-mandatory training	Recommendations 4 and 5 of the 2020 DSE review.

Royal Commission's proposed immediate recommendations	Comment	Relevant 2017 Deloitte Review/2020 DSE Review Recommendation
	options also available. The introduction of further mandatory training will require consultation with a range of key stakeholders including the unions.	

These submissions were settled by Kathryn McMillan QC.

Date: 4 May 2021



for GR Cooper
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