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## **TRANSCRIPT OF PROCEEDINGS**

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**THE HON RONALD SACKVILLE AO QC, Chair**  
**THE HON ROSLYN ATKINSON AO, Commissioner**  
**MS ANDREA JANE MASON OAM, Commissioner**  
**DR RHONDA GALBALLY AC, Commissioner**

**THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND  
EXPLOITATION OF PEOPLE WITH DISABILITY**

**09:11 AM, FRIDAY, 7 MAY 2021**

**DAY 6**

**Dr Kerri Mellifont QC, Senior Counsel Assisting**  
**Mr Andrew Fraser, Counsel Assisting**  
**Ms Elizabeth Bennett, Counsel Assisting**  
**Mr Ben Power, Counsel Assisting**

CHAIR: Good morning, everybody. I welcome everyone who is following today's proceedings. The purpose of the hearing today is to hear oral submissions arising out of Public hearing 7 and the evidence given at that public hearing. Public hearing 7 was held from 12-16 October 2020 and addressed barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impact.

Before going further, I shall ask Commissioner Andrea Mason OAM, who is present in our Brisbane hearing room, to make an Acknowledgment of Country.

COMMISSIONER MASON: Thank you, Chair.

We acknowledge the First Nations people as the original inhabitants of the lands on which this hearing is sitting.

Nganana tjukaru-rung-ku kalkuni Anangu kuwari-pa tjara nyin-antja tjuta, ngura nyang-angka.

We recognise Meeanjin, Brisbane.

Nganana ngur-kanta-nan-yi ngura Meeanjin-nga Brisbane-ta.

We recognise the country north and south of the Brisbane River as the home of the Turrbul and Jagera nations.

Nganana ngur-kanta-nanyi karu panya Brisbane River-nya alin-tjara munu ulpa-rira Anangu ngura-ritja tjuta nyin-antja munu kuwari nyin-anyi Turrbal-nga munu Jagera-nya.

And we pay respect to the Gadigal people of the Eora nation. Their land is where the city of Sydney is now located.

We also pay respect to the Wurundjeri people of the Kulin nation where the city of Melbourne is now located.

We pay deep respect to all Elders past, present and future especially Elders, parents and young people with disability. Thank you, Chair.

CHAIR: Thank you, Commissioner Mason.

Apart from Commissioner Mason, I'm joined today by Commissioner Rosalyn Atkinson AO and Commissioner Galbally AC. Commissioner Atkinson is with me in the Royal Commission's hearing room in Sydney while Commissioner Galbally is participating remotely from Melbourne. As always, since the start of the pandemic, we are dependent upon and resolutely optimistic about the technology that allows remote participation.

At the outset, I would like to express, on behalf of the Commissioners, counsel and staff of the Royal Commission, our deep sadness at the death of Oliver Collins. Oliver gave powerful evidence at our hearing in November last year. He told us how, despite the enormous challenges presented by the rare conditions that caused his disability, he had succeeded in establishing himself as a talented and respected member of the legal profession.

Oliver also told us of some, but not all, of his many contributions as an effective advocate for and committed supporter of people with disability. We extend our sincere sympathy to Oliver's parents, Mr and Mrs Collins, to his family and friends, to his work colleagues, and to the disability community, all of whom held Oliver in such high regard.

The focus of Public hearing 7 was on the barriers preventing young people with disability receiving a safe, high-quality and inclusive education in what are generally referred to as mainstream schools. The evidence of the hearing mainly addressed the position in New South Wales and Queensland but the policy issues examined at the hearing are relevant to all Australian States and Territories.

At the conclusion of the hearing in October, directions were made for Counsel Assisting to prepare and serve on the parties given leave to appear witness submissions on the key themes and issues that emerged in the evidence. The parties were then given a timetable in which to respond with their submissions in reply. Counsel Assisting have prepared detailed written submissions. Written submissions in reply have been filed on behalf of the States of New South Wales and Queensland, both of whom were represented at the hearing. In addition, the Australian Government made written comments on certain aspects of the evidence given at the hearing. The submissions will be released publicly shortly.

The purpose of today's hearing is to provide an opportunity for Counsel Assisting the Royal Commission to make oral submissions in elaboration of the written submissions that have been filed and, if necessary, or appropriate, responding to the written submissions filed on behalf of New South Wales and Queensland.

Counsel representing New South Wales and Queensland will also have an opportunity to present oral submissions. In each case it will be open to Commissioners to ask questions of counsel.

We will now take appearances on behalf of the parties appearing today. I will ask senior counsel, all representatives, when announcing their appearance, to identify their location. We'll start with Dr Mellifont.

DR MELLIFONT: Good morning, Commissioners, I appear today with Ms Bennett, Mr Fraser and Mr Power of Counsel.

CHAIR: Thank you very much. Can we take the appearances next on behalf of Queensland.

MS McMILLAN: Good morning, Commissioners, My name is McMillan, initials KA, Queen's Counsel. I appear with Ms Clohessy and instructed by Crown Law.

5 CHAIR: Thank you, Ms McMillan. I'll take the appearance of New South Wales now.

MS FURNESS: My name is Gail Furness and I appear with Trent Glover, instructed by the Crown Solicitor's Office for the State of New South Wales.

10 CHAIR: Thank you, Ms Furness.

Are there any other appearances to be announced?

15 MR ARNOTT: May it please the Commission. My name is James Arnott, I appear for the Commonwealth of Australia, instructed by Gilbert + Tobin. I am appearing from Sydney.

CHAIR: Thank you, Mr Arnott.

20 There are no other appearances, I take it?

DR MELLIFONT: No, Chair.

25 CHAIR: Dr Mellifont.

### **CLOSING SUBMISSIONS BY COUNSEL ASSISTING**

30 DR MELLIFONT: Thank you. Can we also observe that Victoria have provided some written comments in respect of the Counsel Assisting submissions as well.

35 Before we commence, we as Counsel Assisting also pay our respects to the custodians of all the lands on which we gather today and the lands generally across this country. We pay our respects to First Nations Elders past, present and emerging, as well as to all First Nations people involved in and following this hearing.

40 As the Chair has observed, this is the sixth day of Public hearing 7 which explored the barriers experienced by students with disability in mainstream schools in accessing and obtaining a safe, quality and inclusive education.

45 An inclusive education provides all students of a similar age with an equitable and participatory learning experience and environment. It allows all students to access and fully participate in learning, alongside their similar-aged peers, supported by adjustments and teaching strategies, tailored to meet their individual needs. Inclusion, for it to work, needs to be embedded in all aspects of school life,

supported by culture, policies and everyday practices.

5 Over five days in October, this Commission heard from seven young people with disability who told the Royal Commission about their school experiences and the impact of those experiences on them. The Commission also heard evidence from parents of students with disability, disability advocates, health professionals, academic experts, and education and representatives from the Queensland and New South Wales Departments of Education.

10 That evidence made it clear that an inclusive education for all students is a broadly held aspiration. However, the evidence before this Commission demonstrated that there are a range of barriers preventing that goal from being achieved. Those barriers can be complex, they are often systemic but all seem capable of being addressed, at least substantially so.

15 The complexity involved in addressing them is not an insuperable obstacle.

Our role as counsel assisting is to present an analysis to the Commissioners. That was done in written submissions and we supplement it today.

20 Given that the focus of Public hearing 7 was on inclusive education within mainstream schools, our submissions today don't propose to address the issues raised by special, or segregated schools or issues of inclusion more generally, for example in private or non-government schools.

25 Counsel Assisting's submissions are just that, they are submissions: they don't represent concluded or final findings that will be made by the Royal Commission. They are, of course, provided to the Commissioners to assist with their deliberations.

30 Today we draw out some of the key aspects of our written submissions, including taking the Commissioners to some of the findings that we as Counsel Assisting submit can and should be made, some recommendations that we submit can and should be made, and some areas we consider should be further investigated by this Royal Commission.

35 Before moving to that, may we commence by explaining how we propose to proceed today.

40 First, we will not be calling any witnesses. Today is for submissions, not for the hearing of evidence. In making the submissions, we will refer to some parts of the evidence and indeed play some parts of the videorecorded evidence that we heard in October.

45 Secondly, in order to protect the privacy of certain witnesses, non-publication directions which were made at Public hearing 7 continue in relation to their identity. These non-publication directions continue to apply and Counsel's written and oral submissions have and will use the pseudonyms as appropriate.

Finally, we observe that some of the material to be spoken of today may be distressing to some people. The material may contain accounts of violence, abuse, neglect and exploitation as well as to references to suicide and self-harming behaviour. It will also include, and can also include accounts of such things with respect to First Nations people with disability. It can include, might include reference to First Nations people who are deceased.

If this information raises any issues for anyone watching, we suggest you may wish to, if you feel comfortable doing so, ringing the National Counselling and Referral Service for assistance and help. That number is 1800 421 468. Other areas and places of assistance are Lifeline, 13 11 14, and Beyond Blue, 1300 224 636.

For First Nations viewers, support is also available through local First Nations medical services.

In Public hearing 7 we heard from students with disability and their parents. They shared their experiences about the barriers they faced when attempting to access safe quality and inclusive school environment and the impact of those experiences. You will recall that the students and parents who gave evidence were primarily from Queensland and New South Wales. One consequence of this was the evidence of the hearing focused on those two States, and detailed evidence about other States and Territories was not examined.

In consequence, while we submit that some findings can be made with respect to New South Wales and Queensland, it is not possible or proper to make specific recommendations at this stage in respect of other States and Territories arising out of this hearing, or indeed with respect to some of the issues concerning New South Wales and Queensland at this stage.

Commissioners, you would have seen our written submissions provide some preliminary thoughts as to possible future recommendations which this Commission might consider making in the future once the States and Territories, all of them, have had an opportunity to provide evidence and input in them as they wish to do. These possible future recommendations, as they are so termed in our submissions, should be taken as areas on which we as Counsel Assisting submit are ones on which the Commission should engage in further investigation and consideration. Nonetheless, they, that is the possible future recommendations, still operate as flags to stakeholders, including State and Commonwealth governments, as to the current thinking by Counsel Assisting as to some matters that might inform our latest submissions - that is later in the Commission - about what recommendations the Commission should make.

Counsel Assisting also wish to acknowledge the witnesses who provided the Commission with their suggestions for change in the course of giving evidence as part of Public hearing 7. Although we don't have time to canvas those suggestions in detail today, they do form part of the material that the Royal Commission will take

into account.

5 Finally, before moving on, the information which the Royal Commission has received in both hearings and through other mechanisms, including private submissions, indicates that there are significant concerns that governance structures within the education systems lack the rigour and resourcing frameworks needed to make truly inclusive education a reality rather than merely an aspiration. Much more work is required and the royal Commission will continue to examine education and learning for people with disability, including the experience of school students with disability in different educational settings and sectors across different States and Territories, and may we specifically observe and acknowledge that we have only just started our journey with respect to First Nations students with disability and students from Culturally and Linguistically Diverse backgrounds. As I've said, there's more work to be done.

15 Commissioners, the approach we took in our written submissions was to identify 12 key barriers that students with disability face when trying to obtain a safe, quality and inclusive education. We intend to speak to some of those issues today, and as part of that, to provide a real life case example of some of these barriers, we will shortly come to the case study of Sam. Ms Bennett will provide this overview and she will then proceed to make submissions on some specific aspects of Counsel Assisting submissions. Mr Fraser, Mr Power and myself will also address other parts of the written submissions.

25 Before moving to that case study of Sam, we wanted to speak briefly about the recent review of the Disability Standards for Education, which we will refer to as the DSE review. Some of the submissions in particular, notably New South Wales and Queensland, do refer to the recently released report, the final review of March 2021. As the Commissioners are fully aware, the Disability Standards for Education seek to clarify education providers' responsibility, and ensure that students with disability can access and participate in an education on an equitable basis, the same basis as students without disability.

35 Those standards are to be reviewed every five years and the most recent review since the standards came into effect.

40 The Review itself will make clear that the Royal Commission will examine matters relevant to the efficacy of the standards. The review of the standards provided recommendations which were drafted in a way that reflects the distribution of responsibility for the delivery of education. In this respect, we observe the mere fact of the review does not of course absolve the States of the responsibilities to consider for themselves issues connected with the standards for the delivery of education to students with a disability.

45 It is notable in this respect that the Review itself contemplates that State and Territory Education Ministers to carry out performance audits related to the implementation of the standards. The continued role of the States in delivering

education in a manner consistent with the DDA, and the community's expectations of inclusivity, are manifest. It is not sufficient or appropriate for States to defer consideration of training or compliance with the standards into the future. This issue operates now and of course needs to be addressed now where there are gaps and failings.

It can be said that States and Territories can be change leaders. They can be proactive. They can act on the model of "continue to improve" and they can do that now.

We observe that in the written submissions by Queensland to some of Counsel Assisting submissions, Queensland states that there will be a procedural review occurring within the Department commencing in 2023, and that some of the recommendations we have suggested, some of the measures we have suggested, can happen then. At least that's the way we read the submissions. The Commissioners are likely to want to hear, we submit, as to why these things need to wait until 2023, or, in fact, we noticed the commencement of the internal review is in 2023. We don't know how long that will take.

I hand now to Ms Bennett who will start speaking about Sam's case study before moving to some other topics.

CHAIR: Yes, Ms Bennett.

MS BENNETT: Thank you, Chair. This Royal Commission heard the story of Sam in some detail. Evidence was heard from his mother who we called Amy. Evidence was received about Sam's experience from Mr Potter who, at the time of Sam's schooling career starting, had been the Executive Director of public schools in New South Wales.

As this Commission heard, Sam is a bright and creative young man with Autism Spectrum Disorder, spina bifida occulta, a sensory processing disorder and generalised anxiety disorder, among other things. Amy told us about how these diagnoses made it hard for Sam to control his emotions, and about how he sometimes tended to abscond or to become overwhelmed when he was otherwise in pain or stressed.

When it came time for Sam to start primary school, his parents provided information about Sam's needs and what kind of interventions had been made to help him during his successful time in preschool. A multidisciplinary team, including a speech pathologist, occupational therapist attended the school at the time, before Sam started, to help acclimatise him and his teachers, and Sam's parents felt optimistic that his time in primary school would be productive.

Sam's case study came before this Commission as illustrative of issues relating to, among other things, exclusionary discipline. Exclusionary discipline occurs where a student is removed from the classroom or school for what is seen as negative

behaviour. It can include the use of suspension or expulsion as it concerns students with disabilities.

5 Excluding a child in this way, Commissioners, appears to proceed on the unstated assumption that children's conduct can be controlled by the application of negative consequences like suspension, or that excluding students will ultimately lead to their inclusion. The experience of Sam illustrates significant reasons to question these unstated assumptions.

10 Sam's experience illustrates some of the difficulties with exclusionary discipline and a more complete outline of his experiences are included in the written submissions, and I note at the outset that the State of New South Wales largely agrees with the factual account provided by Counsel Assisting.

15 In summary, Sam started school at the age of 5. In less than a month, he received his first notice of potential suspension citing aggressive behaviour in breach of the school's discipline code. And we submit that this set the landscape for the way in which suspension would be deployed and how his behaviour was being understood as a deliberate choice rather than a manifestation of his disabilities. That first notice  
20 of potential exclusion said if Sam's behaviour continued he could be suspended in accordance with the New South Wales Suspension and Expulsion Procedure, which I will call the "suspension procedure".

25 That suspension procedure has been substantially in place since 2011 and required, among other things, that reasonable adjustments be provided to support students with a disability to access and participate in education on the same basis as other students. It's not clear whether all of the adjustments necessary were made for Sam.

30 In a letter notifying Amy of the potential for Sam to be suspended in the future, it was noted that:

*The matters have been discussed at length with Sam and he knows what is expected of him.*

35 The extent to which a 5-year-old child with Sam's disabilities was able to understand the school's expectations or comply with them is questionable, particularly in light of the evidence of Dr Sturgeon who treated Sam for a number of years. He had substantial experience in working with children with disabilities. He reviewed the notices of suspension noticing the concepts of deliberateness he considered implicit  
40 in them. Dr Sturgeon said, and I quote:

*To the extent that this suggests Sam acted deliberately to disregard rules, that does not accurately reflect Sam's cognitive processes.*

45 Mr Potter, appearing for New South Wales as a witness, accepted that this was an entirely inappropriate letter to have sent to the parent of a 5-year-old child who has been at school for three weeks and clearly had complex issues to deal with. The

Commissioners will see there the exchange with the Chair that elicited that concession.

5 Two days into Term 2, Sam was suspended for two days. He was 5.5 years old at the time. The suspension notice cited aggressive behaviour as the reason for the suspension. In June, he was suspended again for a further two days. Again, aggressive behaviour.

10 The Royal Commission interrogated the question of whether aggressive behaviour was really a useful descriptor of Sam's behaviour in the circumstances of his various diagnoses. Mr Potter, when giving evidence about the suspension policy, gave his opinion that it didn't matter whether the conduct was voluntary or intentional or not, it was sufficient that it caused serious physical harm and that an obligation to suspend followed.

15 Now, Sam's parents appealed that June suspension to the school principal, but nothing was done that we are aware of as a result of that appeal.

20 Sam was suspended for a third time in August of 2016, and this time his parents sent a letter to the New South Wales Department of Education disputing that suspension. The appeal was rejected.

25 In mid-August, less than two weeks after Sam's previous suspension, he was suspended again, this time for 20 days. Again, the suspension referred to aggressive behaviour. That suspension, Commissioners, affected the whole family. Both parents had to adjust their work life at short notice to accommodate the home schooling of their son. The length of the suspension meant that Sam did not return to school for Term 3.

30 I'd like to now play a clip from Sam's mother, Amy, explaining the effect that that suspension had on them. If the operator could provide video V13.

**[VIDEORECORDING PLAYED]**

35

MS BENNETT: What did it mean for you and your family to have 20 days of schooling that you are now responsible for?

40 MS AMY: Well, it's just 20 days that our lives were suddenly thrown into turmoil because we weren't prepared for having our son at home for 20 days. He was meant to be schooling. And so we had to quickly try to organise work and leave and our lives around being able to support him at home now.

45 MS BENNETT: Did you talk to the school about those impacts on you and your family?

MS AMY: I spoke to the principal because it meant that we wouldn't have leave to either visit my husband's family who were away or my extended family who were away, and --- at Christmas which we intended to because we would need to use that leave. In terms, for me because I had my work situation, it would mean loss of  
5 income as well and loss of clients potentially as well. But I didn't discuss that directly with the school. That was a consequence of it, though.

MS BENNETT: Please continue.

10 MS AMY: Yes, just --- I tried to discuss that with them, that we weren't aware, we weren't prepared and I was a bit overwhelmed, really.

MS BENNETT: And what was the response to your raising those concerns?

15 MS AMY: Oh, he was suspended and that was it. That was our problem. There was no response.

20 **[VIDEORECORDING ENDED]**

MS BENNETT: That suspension, Commissioners, was also appealed, and a further review sought of the earlier appeal. Sam didn't return to school for term 3.

25 Term 4 started a few days before Sam turned 6. Two weeks later, another notice of intention to suspend was received, again referring to Sam's "aggressive behaviour".

While Sam and his family continued to grapple with the potential for future suspensions, on 16 November 2016 they received a notice that their appeal against  
30 the August suspension had been dismissed, and the review to uphold the 5 August suspension had also been dismissed, those decisions relevantly made by Mr Potter. In doing so, Mr Potter said the school had put in place extensive supports for Sam, and asked Sam's mother to raise any concerns about implementation of adjustments with the school principal in the first instance.

35 However, it was clear in the Royal Commission's discussions with Mr Potter that in making that decision, he was not aware of the number of suspensions that Sam had had before and did not ask Amy to tell her side of the story about the adjustments that the school asserted that Sam had received. Mr Potter accepted that he could  
40 have taken this step and that he should have done so, Commissioners.

It was Mr Potter's evidence in substance that the suspension policy applied irrespective of the intention of the child or the voluntariness of the action. On his understanding, if the serious physical harm was caused, then the child had to be  
45 suspended. This approach, Commissioners, had the potential to disproportionately impact on students with a disability, as Mr Potter acknowledged, and the State of New South Wales has since accepted.

5 The written submissions of the State of New South Wales in response to the submissions of Counsel Assisting, emphasise the school was obliged to have regard to the safety of other students, Sam and staff, and that these were obligations the school was required to have regard to.

10 The relevance of those considerations may be accepted, and they could be expected to lead to interventions designed to reduce the instances of challenging behaviours with a view to providing him with an education rather than excluding him from that education. However, even in its written submissions for today's hearing, the State of New South Wales continues to refer to Sam's conduct as aggressive, carrying connotations of deliberateness and volition. Again, the extent to which these are appropriate descriptors has not even now, in our respectful submission, been directly grappled with by the State of New South Wales. These are very important issues to  
15 engage with, particularly in light of the comments of Dr Sturgeon that:

*Sam is a child who is highly intelligent but with slow processing capabilities. This means that he can take some time to process information. These issues can be exacerbated by sensory processing differences that arise from Sam's  
20 ASD, leading to him becoming overwhelmed and anxious. His overwhelmed and anxious state can often lead to Sam externalising behaviours sometimes manifesting as violence or failing to act in accordance with direction. Matters like this need to be taken into account in assessing Sam's behaviour.*

25 I quote there, Commissioners, from Dr Sturgeon's evidence.

New South Wales informs the Royal Commission that in March 2021, following Public hearing 7, the Department released its Inclusive Education Statement for students with disability. Moreover, it released its new behaviour strategy in March  
30 2021. Under this strategy, we are told that the Department will implement new policy and procedures for behaviour support and management to guide school leaders and specialist staff. These will come into effect later in this year and when it is made available in full, we expect to consider it further in light of the issues that have been ventilated in this hearing. It is to be hoped, in our submission, Commissioners, that  
35 the strict liability approach to imposing exclusionary discipline upon students with disabilities is not continued, and that the needs of all students, including those with disability, can be considered as central and paramount.

40 Returning to Sam's experience, Commissioners, despite the difficulties in his first year, Sam's family had hopes for his second year. Those hopes ended on 6 February, which was the seventh day of the school year for Sam. On that day, Sam was suspended for two days. He was suspended again on 28 March for a further two days. The reasons were his "deliberate kicking and his ongoing refusal to follow instructions". Term 2 brought a further suspension of 20 days, this time for physical  
45 violence and "persistent misbehaviour".

This was Sam's seventh suspension. All appeals had been refused and he was still

about 6.5 years old with multiple diagnosed disabilities. As discussed above, Mr Potter frankly admitted that he considered Sam's early suspension appeals without knowing about the number of suspensions and without checking with Amy about the degree of supports that were in place for him.

5

Sam's case demonstrates that the complaints process for families in these situations can be long and difficult. I'd like Commissioners to now play Amy's account of her experience of that process, if the operator could play video V38.

10

**[VIDEORECORDING PLAYED]**

15 MS AMY: That's exactly it. You're reaching out for help, and begging someone to help and look at it and support, and you get referred back to the situation that you're in already. So we had already been through those processes, we had already had those discussions, we had hit a brick wall. We were looking for independent guidance and support.

20

**[VIDEORECORDING ENDED]**

25 MS BENNETT: So by this stage, Commissioners, Sam's family had lost faith that their child could receive an education at the primary school, and they made the decision to rearrange their work and home lives to home school Sam, and I'd like to play Amy's own words about that decision in video V21.

30 **[VIDEORECORDING PLAYED]**

MS BENNETT: Why did he not return to that school?

35 MS AMY: We decided --- we had already been doing so much home schooling and had developed resources. My husband had changed his work shifts and I had changed my work to accommodate Sam being at home, so we decided to apply to home school at this stage and were accepted to complete home schooling.

40

**[VIDEORECORDING ENDED]**

45 MS BENNETT: Counsel Assisting submit that a suspension of 20 days' length was inappropriate, having regard to Sam's age, disability, stage of education and other needs. This Commission is invited to conclude that in imposing the suspensions, the school did not have due or proper regard to Sam's disabilities in each instance.

The State of New South Wales accepts that suspensions of this length were inappropriate for Sam, having regard to his age and disability.

5 It is important that in imposing the suspensions, the school acted in a way that was consistent with New South Wales policy. In our submission, it is open to the Commission to find that in Sam's case, the suspension procedure was applied rigidly and without due regard for the disabilities of Sam in each instance. New South  
10 Wales accept that it can be accepted that the procedure was applied literally.

10 In its outline of submissions, the State of New South Wales has also sought to establish that Sam's behaviour escalated from an aggressive behaviour to violence. The accounts of Sam's conduct were not tested in the course of this hearing and the Commission, in our submission, is not in a position to evaluate whether that  
15 behaviour was escalated in the manner now alleged based on this review of documents. In any event, even accepting that Sam's behaviour became more difficult to manage over time, this tends to support, Commissioners, the proposition that whatever was being done to manage him in the school environment was not working. It certainly suggests that multiple suspensions was not working.

20 In focusing so completely upon Sam's conduct and minimising, in our submission, the actions of its own staff in its submissions, the Royal Commission can conclude that the insight demonstrated by Mr Potter in the course of the hearing has not been taken onboard by the New South Wales Department in its written submissions. It is  
25 a concerning emphasis, in our submission, which only demonstrates to focus on challenges and not solutions. It is an approach which does not, in our submission, assist in furthering the objectives of this Royal Commission as set out in its Terms of Reference.

30 We also submit that the Royal Commission should find there were numerous significant defects followed by the Department in its 16 November appeal decision, and the State of New South Wales accepts there were defects in that decision because the decision-maker was not aware of the number of suspensions, did not make  
35 available to Amy the opportunity to respond the version of events put forward, and did not consider whether necessary adjustments had been put in place prior to each suspension.

Overall, it appears to us that the State of New South Wales accepts that Sam was subjected to inappropriate suspensions, that his appeals were procedurally defective  
40 and the process to identify an adjustment was unclear, and that restraint was listed as an inappropriate reasonable adjustment.

The State of New South Wales, nonetheless, submits that this Royal Commission should not find that Sam's educational needs were the subject of educational neglect.  
45 That proposition appears to be based almost entirely on the contention that insufficient weight has been given to the occupational health and safety considerations emphasised by New South Wales in its written submissions.

Commissioners, it's not clear how those factors could operate to change the identification of education neglect where New South Wales has otherwise accepted that it inappropriately excluded Sam from class for long periods of time. That its  
5 appeal process was deficient. Taken together, we submit that these matters strongly suggest that Sam was inappropriately denied educational opportunities which comfortably falls within the concept of educational neglect. His learning was interrupted and that is an appropriate characterisation.

10 We submit the submissions of New South Wales failed to engage the gravamen of the issues explored in the case of Sam. It asserts that Counsel Assisting's submissions pay no regard to the duty of care of Department staff. This approach suggests, Commissioners, that one cancels out the other, and they do not. Counsel  
15 Assisting are, of course, acutely aware of the workplace health and safety obligations imposed on duty holders, including those with the care of people with disabilities --- including the obligation to reduce risk as far as reasonably practicable.

Compliance with those obligations and providing equitable access to an inclusive education are not mutually exclusive propositions. Meeting both requires nuance of  
20 thought, planning and implementation. We submit that one of the issues that was highlighted effectively in the case of Sam was that there was no relationship between suspensions and the therapeutic needs of Sam that could lead to safer behaviours for him and those around him. That is, the suspensions were automatic.

25 In many respects, the submissions of New South Wales reinforce rather than allay the concerns that the needs of students with disability rank below the needs of others.

Because of Mr Potter's evidence that the suspension was an automatic response to Sam's actions about which there was no discretion, it cannot be said, in my  
30 submission, that it was an action taken in order to protect staff or students. It must follow from Mr Potter's analysis that those matters were not considered; the question of whether or not there had been serious harm was enough on its own to trigger the obligation.

35 Accordingly, Counsel Assisting submit that findings should be made in the matter set out in the written submissions of Counsel Assisting.

Commissioners, it appears New South Wales asked this Royal Commission to find that Sam received equitable access to an inclusive quality education. This appears to  
40 be based on the notion that Sam was in a mainstream class, that he was provided with extensive supports, and that those supports were developed in consultation with a broad group that included medical professionals and Sam's parents.

If that finding is indeed sought, Counsel Assisting submit that it's inappropriate or  
45 unavailable. In particular, while it may be said that Sam was in a mainstream class, he was not in that class for more than 48 school days he was excluded. It's not enough to be assigned to a classroom. An education must be available when the

child is there.

5 The reliance upon the provision of reasonable adjustments is misconceived. It was  
precisely the lack of clarity around the New South Wales policies and procedures  
about how to make and identify reasonable adjustments that was highlighted in this  
case. This Royal Commission did not interrogate the precise provision of  
adjustments for Sam, but it was clear on the evidence that there was dispute about  
this issue, and in our submission that dispute does not fall for resolution in the course  
of this hearing as contended by New South Wales.

10 Counsel Assisting submit that if this finding is indeed sought, it should not be made.

Commissioners, turning from the case of Sam to other forms of exclusion, it should  
be noted that exclusion can occur when students are asked to attend school part-time  
or are not permitted to attend all classes. At the time of this hearing, Kobe was a  
16-year-old and not attending school. He had what were described as serious and  
complex disability needs. He also had, among other things, a sensory processing  
disorder and a speech language delay. Kobe's mother, Sarah, told us about Kobe's  
experience attending school part-time. If the operator could please play video V15.

20

**[VIDEORECORDING PLAYED]**

25 MR FRASER: At paragraph 48 of your statement you say by the end of second  
week of Term 1, he was finishing school at lunchtime. What do you mean by that?

MS SARAH: So often I was called to collect him or his father would be called to  
collect him.

30

MR FRASER: And how would that arise, on what basis was it explained to you that  
you had to come and get him?

MS SARAH: That he wasn't coping, that he was tired and seeming to be anxious.

35

MR FRASER: In your statement ---

**[VIDEORECORDING ENDED]**

40

CHAIR: Sorry, could I interrupt. Are we meant to be seeing a video? I'm sorry, can  
we pause there. Are we meant to be seeing a video, because all we're seeing or  
hearing is audio?

45

MS BENNETT: Sorry, Commissioner. I'm sorry, it was audio content only, I  
believe that the actual image was not available at the time of the hearing. I apologise

for referring to a video.

CHAIR: Okay. I just wasn't sure. Thank you. Please continue with it.

5

**[VIDEORECORDING PLAYED]**

10 MR FRASER: At paragraph 48 of your statement you say by the end of second week of Term 1, he was finishing school at lunchtime. What do you mean by that?

MS SARAH: So often I was called to collect him or his father would be called to collect him.

15 MR FRASER: And how would that arise, on what basis was it explained to you that you had to come and get him?

MS SARAH: That he wasn't coping, that he was tired and seeming to be anxious.

20 MR FRASER: In your statement you say that by April 2018, Kobe was only attending school for around three periods a day and was finishing school around 12.30 to 1.00 pm. What discussions had you had --- first of all, that was the case, wasn't it?

25 MS SARAH: That's correct.

MR FRASER: And what discussions had you had with the school about that consistent early finishing?

30 MS SARAH: I was under the assumption that it was only going to be temporary, and that it wasn't going to be ongoing. I was told that it was being done so that Kobe could manage his anxiety whilst he continued to transition.

35 MR FRASER: At that early time, say around April, was there any set plan or goals of when he would return to full-time or normal hours, if you call it that, normal school hours?

MS SARAH: No.

40

**[VIDEORECORDING ENDED]**

45 MS BENNETT: This hearing proceeded on the specific premise that particular findings would not be sought in respect of the cases of Jack, Quaden, Kobe, Maria and Leif; rather, their accounts and those given by family members, were received by the Royal Commission as their personal lived experience. So, consistent with that

premise, Commissioners, Counsel Assisting does not submit the specific factual findings with respect to these cases.

5 Dr Sturgeon told the Royal Commission that children and young people with Autism Spectrum Disorder and developmental delays respond positively to consistency, and as such, being excluded from school will not always affect their behaviour in a positive way. There is no regulatory national framework that govern the use of exclusionary discipline at school although there are some regulations in some States. There is scope for significant variation across the jurisdictions. For example, Mr  
10 Lassig agreed that there was limited monitoring requirements around how expulsion decisions are made in Queensland State schools. He accepted there would be inconsistencies around how individual circumstances are taken into account. Mr Lassig agreed there was a concern at a systemic level.

15 Where students are expelled or excluded from the classroom for either a long or short period, it's important that they are re-engaged in the school system. The Royal Commission heard issues faced in schools with students with disability when they attempt to re-engage in schooling following an exclusion. Queensland identified two causes of delay. Enrolment in a new school cannot occur until the student is  
20 officially excluded from the first. The principal of the first school can take up to 20 days to make an expulsion decision which involves a two to three week process to identify and enrol in a new school. Delay can also arise when schools are reluctant to facilitate an enrolment of a student who has been expelled. Ms Howlett said some principals don't return emails or phone messages promptly with the result that a  
25 child's return to school can be delayed.

Ms Howlett told the Commission that senior guidance officers in Queensland are required to follow up with families three and six months after a formal exclusion, but there's no formal requirement to check in with a family after this time. Submissions  
30 received on behalf of Queensland don't appear to engage with the appropriateness or otherwise of these practices.

The Royal Commission heard a number of stories about students who lost contact with the school system. For example, the Royal Commission heard from Jack. Jack  
35 lives with Tourette Syndrome, Attention Deficit Hyperactivity Disorder, Obsessive Compulsive Disorder, and a number of disorders and depression. Although Jack was not excluded from school, he was withdrawn from one high school and enrolled in a flexi school by his family, which then felt this was the wrong environment for Jack.

40 After withdrawing from the flexi school, his parents' experience was that they didn't receive further contact from the Department about his re-engagement with the school system.

I'd like to play a short excerpt, a video from Jack's family. If the operator could play  
45 V20, please.

**[VIDEORECORDING PLAYED]**

5 MS SHARON: We did have a look at teaching him remotely, but I figured the kid --- they told me it would be about \$1,800 and I'd have to leave work, so it wasn't financially viable for us to do that, and I figured if the teachers couldn't teach Jack or get Jack to do schoolwork, there was no way that I was going to be able to. Yeah. Any sort of mention to Jack about learning, he just shuts down. Even now at the age of almost 19 (inaudible).

10 MS BENNETT: So how old was Jack when he finished formal education?

MS SHARON: 14, I think, he may have been. 13, 14.

15 MR ALEX: 13, I think.

MS BENNETT: And was there follow-up from the Department of Education about him after that?

20 MS SHARON: No. We heard from nobody, actually. I kind of --- I was a bit afraid that somebody would knock on the door or have even the Department of Child Safety come and knock on the door and say, "You know, you're failing as parents, your son needs to be in school" and take him off us. So that was always in the back of my mind but we never heard from anybody. So we just worked on keeping him  
25 alive and keeping him trying to build him back up again. And we're still working on that now.

**[VIDEORECORDING ENDED]**

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MS BENNETT: In a similar way, Commissioners, after Kobe was expelled from school, his mother Sarah told the Royal Commission that she felt that education officials saw them as too difficult. Sarah said she was told to enrol Kobe in another  
35 State school. It's submitted the Royal Commission can find the processes for re-enrolling children after expulsion in Queensland are not sufficient to encourage immediate re-engagement, that they can be ineffective in overcoming reluctance from school to accept --- from a school to accept an enrolment and that these issues are not addressed in any specific policy or procedure. Counsel Assisting submit it's  
40 appropriate for Education Queensland to review its processes for re-engaging and re-enrolling students after exclusion with a view to ensuring students with disability are effectively supported to re-engage and re-enrol as soon as possible, and to develop specific policies or procedures to improve the outcomes for students with disabilities.

45

Finally, in respect of the matters that I will address the Commissioners on, I want to touch briefly on restrictive practices. Briefly because, Commissioners, the Royal

Commission did not examine the use of restrictive practice in detail in this hearing but it is important to note that some of the evidence raised the issue of those practices in relation to students with disability. For example, restraint was listed as an adjustment for Sam when he was 5 years old. It was conceded by Mr Potter that that was unreasonable, particularly in the absence of the parents' full knowledge and support of that listing.

10 The State of New South Wales accept, in the circumstance of the hearing, that restraint of Sam was not a reasonable adjustment.

15 The New South Wales submissions go on to discuss whether restraint can ever be a reasonable adjustment, and this is a matter which has not yet been squarely addressed by this Royal Commission and will be the subject of further work. However, at this stage, it's interesting to note that New South Wales submit it does not accept that restraint can never be a reasonable adjustment. Confronted with aggressive anti-social and violent behaviour, it cannot be the case that restraint and exclusion could never be a reasonable adjustment.

20 These submissions don't then go on to suggest when exclusion and restraint could be a reasonable adjustment, again highlighting a somewhat negative and unhelpful approach we found in these submissions.

25 We expect, Commissioners, to assist you in exploring cases where restraint or seclusion is squarely at issue, and we anticipate that there will be real questions about whether such actions are properly considered to be an adjustment, provided to enable a student with a disability to access their education or something else. We have little data about the use of restraint in school because that information is either not kept or not released. The lack of data has been addressed in Queensland, which has informed the Commission of its plans to commit the capture of that data in its systems.

30 The Royal Commission received information about policies in place in Queensland, and it's open to this Royal Commission to recommend that Education Queensland review its restrictive practices procedure to consider whether and what extent mandatory reporting obligations should be expanded beyond that for which it presently provides. Queensland has submitted that this will occur as part of its procedural review in its restrictive practice procedure commencing in 2023, and no compelling reason is identified as to why that review should not occur for such an extended period.

40 I say again that the use of restrictive practices in a school environment will be the subject of further work and consideration by this Royal Commission in the future, and we expect to be able to assist the Commissioners further when that occurs.

45 I will hand over to Mr Fraser.

CHAIR: Thank you very much. Yes, Mr Fraser.

MR FRASER: Commissioners, I will be addressing the following three areas. First, the provision of adjustments for students with disability; secondly, teacher resourcing and training; finally, matters of funding.

5

Turning first to the provision of adjustments. We start by unpacking the concept of an adjustment, which is a term that can have different meanings in different contexts. For our purposes, and as defined in annexure A of the written submissions of Counsel Assisting, the term "adjustment" means any action or measure taken or sought which is intended to enable a student with disability to be provided with a quality education. These can include variations to instruction, assessment, task, resources or environments that remove barriers to enable students with disability to access, participate, and make progress in their learning. That is to say, adjustments can be made to the way in which educational content is provided in order to respond to the needs of a student with disability so they can fulfil their potential and thereby minimise the potential for neglect of such students.

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That's to be contrasted with the concept of a reasonable adjustment, which has a specific legal meaning under the *Disability Discrimination Act* and under the Disability Standards for Education.

20

During Public hearing 7, the Royal Commission heard evidence regarding difficulties in consistently identifying, planning and providing reasonable adjustments for students with disability and where disputes arose about the appropriate provision of adjustments, an absence or difficulty in efficient or independent means by which those disputes could be resolved.

25

For example, as referred to this morning by Ms Bennett, we heard evidence from Sarah, Kobe's mother. Sarah gave evidence that it took until Term 2 for Kobe to be assessed by an occupational therapist at the second school he attended, and after that occurred, she considered that adjustments recommended following that assessment were not implemented consistently or in some instances at all.

30

As to the identification of an adjustment, we heard from Dr Kate de Bruin, a senior lecturer on inclusion and disability within the Faculty of Education at Monash University, and Associate Professor Shiralee Poed, an Associate Professor in the School of Early Childhood and Inclusive Education at the Queensland University of Technology.

35

We heard evidence to the effect that the process by which adjustments are provided is often ad hoc and in some instances, the evidence suggested some schools provided inappropriate, ineffective, or otherwise unsuitable adjustments. In particular, Dr de Bruin noted that guidelines available to schools to assist them to implement adjustments is limited. The provision and evaluation of adjustments is an ongoing process. Like all students, the needs of students with disability change over time. As such, the effectiveness of adjustments provided to them may also change.

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Further, an adjustment initially thought to be appropriate may subsequently be found to be ineffective. As a result, there's good reason to recommend that the implementation of adjustments are checked and evaluated to ensure fidelity of implementation and effectiveness of the adjustment.

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That's important because the provision or otherwise of an adjustment has a direct and immediate effect on the ability of a student with a disability to reach their potential. The point was well made by "Alice", a student living with disability who shared her personal experience with the Royal Commission via a video of herself speaking at the National Youth Disability Summit that was played and admitted into evidence at the hearing. Alice referred to the impact and the anxiety that she suffered when a teacher's aide was assigned to her who had poor word processing skills and which she considered risked jeopardising --- Alice considered risked jeopardising her own academic performance.

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A short extract from that video will be played now, which is video V6.

**[VIDEORECORDING PLAYED]**

20

ALICE: ..... By year 9 I had really started to love academic pursuits and my success had seen this become an element of my identity in which I was, and still am, really proud. At this stage in the classroom, I did just need a teacher to be my hands. What I got was a well-intentioned person whose lack of technical expertise, particularly with word processing, was the cause of significant distress, not just for me but for her. I know why I was assigned this aide and, again, the intention was not malicious. My program managers wanted me to be more independent. But the problem was, this approach increased my anxiety, largely because I was so worried about the potential impact on my academic outcomes, and hence a part of my identity felt threatened.

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**[VIDEORECORDING ENDED]**

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MR FRASER: As to the process for identifying adjustments, the Royal Commission heard evidence from Mr Chris Lassig, the Assistant Regional Director, North Coast Region, at the Queensland Department of Education, and from New South Wales, Mr Frank Potter, the Executive Director of School Performance at the New South Wales Department of Education. Neither Mr Lassig or Mr Potter identified with any specificity a method provided to staff of identifying what adjustments might be appropriate for a particular student. Mr Lassig gave evidence as to the trust in principals to make decisions relating to adjustments but said there was no specific training about providing adjustments. He also accepted that the confidence and capability of principals will vary.

40  
45

Mr Potter ultimately accepted that identifying a reasonable adjustment was a matter involving considerable discretion which could lead to relatively differing experiences for students at different schools.

5 As to the position in New South Wales, as Ms Bennett referred to earlier, the Royal Commission heard evidence about the schooling experience of Sam. In particular, in Sam's case, restricted practices and exclusions were described in a letter from the New South Wales Department as reasonable adjustments, which Mr Potter acknowledged in his evidence was not an appropriate description.

10 What I've spoken of is illustrative of educators and school leaders lacking understanding of what constitutes adjustments, and, related to that, a lack of clarity and policies and procedures about identifying and implementing appropriate adjustments for students with disability.

15 As identified in the written submissions of Counsel Assisting, it's submitted that the Royal Commission should find that the New South Wales system for identifying and implementing reasonable adjustments lacks clarity and is prone to inconsistent and widely varying application. The State of New South Wales accepts that the system in place during Sam's enrolment at the school lacked clarity and was prone to inconsistent and varying application.

20 More generally, there is significant discretion and autonomy conferred upon principals with respect to the education of students with disability at their schools, including about the implementation of adjustments and the allocation of funds and other resources, a topic which I will return to.

25 Relevant to matters of principal autonomy and procedures for identifying and implementing adjustments is the importance of consultation with students with disabilities and their families. As is referred to in the Commission's Terms of Reference, the experience of people with disability is multi-layered and influenced by experiences associated with a variety of matters such as age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, particularly a situation of First Nations peoples and Culturally Linguistic Diverse People with disability.

30 We heard evidence from Ms Yarraka Bayles about the adjustments her son Quaden required to safely attend school, including a support worker to assist Quaden with toileting and with supervising in the program, explaining that if he falls, it could be life-threatening. Ms Bayles's evidence was that Quaden feels most comfortable and culturally safe with a male First Nations support worker. In that instance, the Queensland Department of Education ultimately worked with Ms Bayles to provide that to Quaden, amongst other supports. I will play a short extract from the evidence of Ms Bayles which will be followed by a short video extract from Quaden himself, and I ask that video V7 and then video V8 be played.

**[VIDEORECORDING PLAYED]**

5 DR MELLIFONT: So in the past, and thank you for observing that things have moved on, we'll come back to that, but in the past, not having an Indigenous male support worker, what did that mean for Quaden in terms of his toileting habit?

10 MS BAYLES: He would have accidents and get teased for that and not want to go to school because he'd soiled his pants in class because he'd tried to hold it, and then we hear other stories of children with dwarfism as well that would hold it until they get home and that can cause internal problems with your organs, your bladder, because you're holding, you know, your stools and urine as well. So it was causing a lot of problems and he just didn't feel comfortable. It wasn't a choice. You know, you just get assigned, but we're just happy he had a support worker so we didn't feel  
15 he'd have any right to question or request a change in support worker. But it wasn't someone that he was comfortable with by any means.

We've just returned from the Northern Territory where he's done ceremony and went through men's business and to understand that, you know, there is sacred men's  
20 business and women's business, and to have a non-Indigenous female, I can understand why he didn't want her taking him to the toilet. She can't go into, you know, the boy students' toilet to the male urinal, so there wasn't much she could do when it came to assisting with toileting.

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**[VIDEORECORDING ENDED]**

**[VIDEORECORDING PLAYED]**

30

DR MELLIFONT: Can you tell me how you would like school to change? The changes you would like to see happen at school?

35 QUADEN BAYLES: Like anything?

DR MELLIFONT: Anything.

40 QUADEN BAYLES: Probably one more support worker, a Murri one, a real one, so when [bleep] is away I can have that one and he's gonna be there.

**[VIDEORECORDING ENDED]**

45

MR FRASER: The Commissioners will recall that in Public hearing 2, Ms Deborah Dunstone, Assistant Director-General, Disability Inclusion in Education Queensland

gave evidence that there is no policy that commits to a student's voice being heard when making decisions about what adjustments the student needs. That evidence must be seen in the context of the acknowledgment by Mr Lassig of the same Department in Public hearing 7 of the importance of the voice of students with disability being involved in conversations about the adjustments that they require and the frequency of those adjustments.

Dr de Bruin and Associate Professor Poed also gave evidence that consultation with students about reasonable adjustments occurs rarely, especially if the student has a severe disability.

In the written submissions provided by the State of Queensland, reference is made to Recommendations 1 and 2 of the 2020 DSE review, being a national review, that Ms Mellifont referred to this morning. Recommendation 1 calls on the Australian Government to co-design information products in the DSE, adopting nationally consistent approach, and Recommendation 2 recommends the DSE are amended to include principles on consultation, issue resolution, complaints handling.

The submissions from the State of Queensland also refer to the commitment made by Queensland Education to implement in particular Recommendations 4 to 6 of the 2017 Deloitte review, namely improving parent and student engagement.

It's submitted that the Royal Commission can find that while Education Queensland encourages schools to consider involving students with disability in decisions about their education, it does not currently have a specific policy that required the voice of students with disability to be taken into account in respect of decisions as the provision of adjustments and supports.

The State of Queensland's submissions also refer to Recommendations 4 to 6 of the Deloitte review and state that all Department of Education policies, procedures and guidelines now require schools to consult parents and, if appropriate, students in relation to reasonable adjustments. No further particularisation is provided.

As to that submission, firstly, Recommendations 4 to 6 of the Deloitte review are directed towards strengthening parental advocacy and improving complaint resolution which, while relevant, are not specifically directed towards consultation around the implementation of adjustments.

Secondly, and plainly, not every education policy, procedure and guideline addresses students with disability. Of those related to provision of adjustments for a student with disability, the most immediately relevant appear to be the fact sheet, legal requirements, Student With Disability fact sheet, which was Exhibit 2-012.5, and it states:

*To make a reasonable adjustment under the DSE, schools must consult the student (if possible) and their parents or carers.*

The fact sheet, parent and community engagement --- part of Exhibit 2-01.19 --- is in the term stated in the submissions from the State of Queensland being, if appropriate, to consult with students.

5 As to that documentation, there is no particularity provided as to matters such as when and how consultation with students with disability should occur, when it would be considered to be appropriate or possible, or not possible or otherwise. Given the discretion implicit in the phrase "if appropriate", and also knowing the obligation under the DSE on education providers is to consult with a student or an associate of  
10 the student, it's submitted that a specific policy ought to be developed rather than continued reliance on general statements addressing the issue.

Even if adjustments are identified, the Royal Commission heard evidence that those adjustments are not necessarily provided. For example, from Ms Maria Scharnke,  
15 who is a 17-year-old undertaking Grade 12 in Queensland at the time of the hearing. She gave evidence about autism being a fundamental part of her identity and how her experience of adjustments have not been provided in some subjects.

She told the Royal Commission because she was the only student in her year group with disability who was taking classes, particular classes that could lead to university admission, she had "no learning aids or supports in any of my classes because the class quota of disabled students has not been met." She further gave evidence about the process difficulties and delays she underwent to obtain adjustments to undertake her external Grade 12 ATAR assessments.  
20

25 Sharon, Jack's mother, gave evidence that Jack frequently went without adjustments. She stated:

30 *There was still no aide available, there was still no modification to the teaching in the class for Jack that I could see.*

These experiences were echoed by advocates that gave evidence, recalling that the Commission heard from representatives from QAI, Family Advocacy, and Children and Young People Australia.  
35

Dr de Bruin and Associate Professor Poed gave evidence that mandatory training on the *Disability Discrimination Act* and Disability Standards for Education is limited and that there is confusion among teachers and school staff about what reasonable adjustments are or when individualised education plans are required to be used.  
40 These matters are by no means straightforward.

As I submitted previously, like all students, the needs of students with disability change over time. However, as submitted at paragraph 116 of the submissions of Counsel Assisting, the evidence points to there being a lack of consistent guidance  
45 about how adjustments for students with disability should be identified or evaluated.

Counsel Assisting acknowledges that identification of appropriate adjustments can be

a complicated exercise, however, it is not a reason for not making all reasonable efforts to identify adjustments to implement them. The provision of clear and consistent guidance and requirements for planning, implementation and evaluating reasonable adjustments will assist to ensure persons with disability are provided with the adjustments that they need.

This is also an area in which disputes arise between students with disabilities, their families, and schools. If the pathway for what is to happen, when a student or parent disagrees with a decision about an adjustment is unclear, then sometimes the end result is litigation. There can be no doubt that litigation between schools and families is costly, often counterproductive and is to be avoided, if at all possible. That is a reason why it is submitted that a process for resolving disputes about the proper identification and implementation of adjustments is critical, and it is the subject of a possible future recommendation as set out at paragraph 122.

These include recommendations directed to resolving complaints or disagreements about the implementation of reasonable adjustments through a collaborative and accessible process, ensuring independent process can be accessed by students and families where a situation cannot be resolved directly with a school principal.

DR MELLIFONT: Thank you, Mr Fraser. Commissioners, if it's a convenient time to have the morning break until 10.45 and then we will resume with Counsel Assisting submissions for approximately another hour before the parties who wish to make supplementary submissions to do so and whether the Commissioners have questions for those parties.

Can I indicate too, Commissioners, that Ms McMillan QC for the State of Queensland has indicated to me that she will be presenting some additional information to the Commission with an update in respect to Queensland's bullying policies and procedures. She will be doing that from the bar table, but has, of course, offered to follow that up in writing as well after today. Is 10.45 convenient, Chair?

CHAIR: I think we will make it until 10.50, Dr Mellifont. So we will return at 10.50.

DR MELLIFONT: Thank you.

**ADJOURNED** [10.32am]

**RESUMED** [10.50am]

CHAIR: Yes, Dr Mellifont.

DR MELLIFONT: Thank you, Commissioners. Can I just also inform

Commissioners that I understand that counsel for the State of Queensland will also be updating the Commissioners on some other matters and will explain the timing around the 2023 review, which I now understand will be finalised in 2023, not started in 2023. But in any event, Ms McMillan will address those issues in oral submissions when it comes time for that.

Mr Fraser will now speak to the topic of teacher resourcing and training.

CHAIR: Thank you, Mr Fraser.

MR FRASER: Thank you.

Commissioners, in Australia, teacher education courses and professional learning courses for in-service teachers must be aligned with the Australian professional standards for teachers. Dr de Bruin told the Royal Commission that of these standards, three are relevant to planning adjustments for students with disability, and of those three they are relatively generic and only refer to relevant policy and legislative standards rather than referring to the DSE. Professor Graham also gave evidence about the need to reform standards to better ensure that teacher training mandates inclusion of topics relevant to teaching students with disability. Associate Professor Poed explained that in Australia, there are limited requirements for school leaders to undertake formal training on their obligations under the DSE and *Disability Discrimination Act*. Further, Dr de Bruin told the Royal Commission that while there are materials available on the NCCD professional learning portal, improvements are needed.

Mr Lassig of Queensland Education gave evidence that there is no mandatory requirement in Queensland for principals to undertake training to help them understand their obligations with respect to the education of students with disability. He accepted that a person would not know, from reading the inclusive education policy, what the DSE requires unless they went and reviewed the DSE themselves. And, it was still possible, as at the date of the hearing, that decisions could be made without the decision-maker knowing what the DSE requires.

Ms Theodore, a Principal Education Officer at Education Queensland, gave evidence that in her experience school staff do not have a good understanding of the DSE, even though the standards have been in place for 15 years and that some advisory teachers and HOSES also do not have a solid knowledge of the policies, procedures and guidelines.

Further, while in her role she provided legislative and policy advice, many principals followed their own course of action.

As set out in the submissions of Counsel Assisting, it's submitted that the Royal Commission should find Education Queensland does not require school principals to undertake specific mandatory training about the provision of adjustments, decisions about funding and resource allocations for students with disability, and legislative

requirements under the DDA and DSE, and that it should require them to do so.

5 The State of Queensland, by its written submissions, has referred to the 2020 review of the DSE and particularly Recommendations 4 and 5. The matter of the DSE review has been the subject of earlier submissions by Dr Mellifont which I will not repeat.

10 As to the present situation in Queensland, as the awareness of teachers and principals under the obligations under the DSE, the State of Queensland submissions refer to Education Queensland having implemented particular recommendations as to legislative and policy awareness in the Deloitte review. Reference is also made to submissions --- sorry, reference is made in submissions to existing training and supports, including access to tools relating to the DSE.

15 In those submissions, it's conceded that some of the training available is not mandatory. Those submissions also refer to mandatory training that principals are required to undertake as to the ethical use of resources and codes of conduct. It is not stated that mandatory training addresses relevant obligations under the DSE.

20 Now, the implementation or otherwise of the Deloitte recommendations, or the availability of non-mandatory training, does not address the serious matter identified in Public hearing 7 in the oral evidence of Mr Lassig. The decisions as to adjustments could be made without the decision-maker knowing what the DSE requires.

25 Accordingly, there is a proposed immediate recommendation that Queensland Education should require all school principals to undertake specific training with respect to the education of students with disability as soon as possible, but within 12 months, and that training should cover a number of matters including specifically the legislative requirements under the DDA and DSE, and that completing the above training should be a condition of appointment to the role of principal.

30 More generally, attention is also directed to the possible future recommendation that to the extent it is not already occurring, State and education departments and all non-government school bodies should mandate formal training for all school staff as soon as possible, but within 12 months that covers evidence-based teaching and behaviour support, provision of adjustments and supports, the allocation of funding, and the legislative requirements under the DDA and DSE.

40 I'll turn to the final topic which I'm addressing, being the issue of funding.

45 As noted in the Commission's report on Public hearing 2, Commonwealth funding for school students with disability is informed by data collected under the National Consistent Collection of Data on school students with disabilities, the NCCD. The focus of these submissions issue is not as to the quantum of funding, but rather the use made of funds made available to schools in Australia.

At a State level, most State education documents use models that specify categories of disability that attract particular funding and eligibility criteria for each category. In some instances, the availability of support for a student with disability can depend upon whether or not that student has been verified in a category of disability that attracts funding.

The Royal Commission heard direct evidence as to funding models in New South Wales and Queensland. In New South Wales, the resource allocation model, which includes allocation of funding to support students who meet the Department's disability criteria of moderate to severe intellectual disability, physical disability, mental health disorder, autism, hearing and/or vision impairment.

In Queensland, the EAP, or Education Adjustment Program, is one element of the resources provided to schools. The EAP assists schools to provide reasonable adjustments to students with disability who is are verified according to six categories - Autism Spectrum Disorder, hearing impairment, speech impairment and vision impairment. The Royal Commission heard evidence as to the issues that attend such categorical funding models. These include a mistaken belief held by some teachers that a student is only entitled to reasonable adjustments if they're in receipt of additional resourcing.

Counsel Assisting propose that the Royal Commission find that there remains confusion at the school level as to how funding can and should be used as a result of the EAP process, and that an existence of categories suggests a threshold must be met before support can be provided. Now, this finding is only intended to apply in Queensland.

Returning to Queensland, Ms Haythorpe, who had been a senior guidance officer in Education Queensland, told the Royal Commission that in her experience, students that did not fit into the EAP categories would not obtain support, particularly students with complex behavioural disorders or mental health diagnoses.

The Commission heard evidence from Sharon and Alex, the parents of Jack who has Tourette Syndrome, ADHD and OCD, who told the Commission that it was the school's suggestion that they take Jack back to the doctor to get him diagnosed with autism as well, as that will result in funding for a teacher's aide, which was to obtain the diagnosis at their personal expense. And further, of their devastation when the psychologists would not tick the box for autism.

Mr Lassig accepted that the EAP six categories were carried over from a prior ascertainment model that existed until about 2004 or 2005, and that in the past students without an EAP verification sometimes received less support than their verified peers.

Further, he accepted that additional funding a school received, associated with EAP verifications, is not required to be spent on students with disability. In his evidence, Mr Lassig told the Royal Commission he did not know why the Queensland

Government used the EAP verification process, given disability support is intended to be provided irrespective of verification under a particular category. He accepted that there is no reason to wait to get rid of the EAP verification system.

5 The issue of resourcing was the subject of a recommendation in the Deloitte review. During the hearing, Education Queensland confirmed to the Royal Commission its commitment to undertaking a resource allocation review for students with disability. The written submissions by the State of Queensland refer to the steps undertaken to progress that review.

10 The submission of Counsel Assisting requires an immediate recommendation that Queensland moves away from the EAP to a non-categorical resourcing model as soon as possible, but within 12 months, and in the meantime clear direction is provided to Education Queensland staff clarifying the misconception about how the current EAP model is to operate.

15 CHAIR: Mr Fraser, you will note from the written submissions that have been received from New South Wales and Queensland that a question has been raised as to what non-categorical funding means. Are you able to clarify what that concept entails?

20 MR FRASER: It's something that is going to need further work from the Commission. So, not at this time, but I'm happy to --- I'm content to pass that query to Ms Mellifont QC of Counsel.

25 CHAIR: I'm sure you are!

30 DR MELLIFONT: Chair, if I can just seek to answer the Chair's question. The evidence was described in Public hearing 7 in terms of categorical models particularly by the witnesses such as Professor Graham. The categorical models are, as we have heard, models which require a diagnosis in order to trigger funding. Non-categorical models are the opposite of that. They are --- by non-categorical models what we're talking about is needs-based funding. So you don't have to tick a box, a specific diagnostic box to trigger funding, it's about needs-based. That's what we mean by that term.

35 CHAIR: That carries with it an implication that non-categorical funding would require some criteria other than leaving it to the untrammelled discretion of a decision-maker who may be a principal or somebody else at local level.

40 DR MELLIFONT: Yes, Chair, that's correct, and certainly precisely what the model should look like in the future can be the subject of further investigation. But the overarching consideration should be that funds are directed to those who need - to students with disability in order to address their needs. That's the premise of Counsel Assisting submissions, to move away from the categorical model, particularly that which applies in Queensland, which has given rise to misunderstanding about funding models and where the money goes, and it has given rise, as we have heard at

least anecdotally, to some students with need not getting the help that they do need. Does that answer the Chair's question?

5 CHAIR: Yes, it does, thank you. It leaves open the possibility of the two approaches being combined in the sense that if a student fits within one of a number of defined categories, that would create an entitlement but then a residual category that focuses upon needs but that is perhaps something to be, as you say, explored a little later.

10 DR MELLIFONT: Thank you, Chair. And I'm reminded by Ms Bennett, who is a practitioner from Victoria, that they do have a combined approach.

CHAIR: Thank you very much.

15 Yes, Mr Fraser, thank you.

DR MELLIFONT: Mr Fraser has actually finished his submissions in respect of the topics he was going to speak to. I'm now going to speak to the topic of bullying.

20 CHAIR: Thank you.

Thank you, Mr Fraser, for your submissions.

Yes, Dr Mellifont.

25 DR MELLIFONT: There can be no doubt that bullying can have a drastic and long-term effect on the health and well-being of any student, including a student with disability, and so much is reflected within the national definition of bullying which expressly acknowledges that bullying of any form or for any reason can have  
30 immediate, medium, or long-term effects on those involved, including bystanders.

The national definition of bullying was a product of the Safe and Supportive School Communities Working Group, which is a joint initiative of Australia's government, Catholic and independent schooling sectors. That group includes representatives  
35 from the Commonwealth and all States and Territories, as well as national Catholic and independent school representatives.

It would seem to be an uncontroversial proposition that ensure that schools take all reasonable steps to protect against students being bullied and to take action when  
40 bullying occurs. It cannot, and is not, positively asserted by any of the States appearing in this hearing that bullying does not occur within the respective school systems from time to time. Indeed, it would be naive for any State or any educational provider to believe that bullying does not occur from time to time.

45 It is also clear from the evidence of Mr Lassig, and by inference from some of the Queensland procedural documents, that bullying does occur and is recognised to occur from time to time.

5 In the course of examination of Mr Lassig, I referred him to a statement of Ms Leslie Theodore, and one of the reflections of Ms Theodore was that Jack may have finished school if other students were more accepting of people with different attributes and did not make mean comments. Mr Lassig accepted that Ms Theodore is an extremely experienced educator and Principal Education Officer within the Department of Education, and he was prepared to accept Ms Theodore's reflections as being valid.

10 Mr Lassig's statement states that the Department does not hold or collect centralised data of instances of bullying at schools. His statement also observes that there are supports available in every Queensland school to help protect young people and address the problem of peer behaviour and bullying.

15 Now, it's these types of statements within his own statement which obviously contains the inference that there is a problem which needs to be addressed, that is if bullying does occur and seeking to address it.

20 CHAIR: Dr Mellifont, sorry to interrupt. You referred to the definition of bullying that had been agreed.

DR MELLIFONT: Yes.

25 CHAIR: Could you identify for us where that definition can be found in the information, or if not now, then at some stage?

30 DR MELLIFONT: I can. Can I ask, please, for the operator to bring up the Queensland Government Department of Education fact sheet entitled "Bullying and school aged students", QLD.0005.0041.2509.

35 As can be seen, this Queensland fact sheet employs the national definition, and when you click on the link which you can see underlined there in the fact sheet, it takes you to the No Bullying website which is the product of the group I mentioned earlier in my submissions, and this is the definition which appears there as well as here.

40 You will see, if that first paragraph can be brought up, please, that bullying is defined as:

45 *..... the ongoing and deliberate misuse of power in relationships through repeated verbal, physical and/or social behaviour that intends to cause physical, social and/or psychological harm. It can involve an individual or a group misusing their power, or perceived power, over one or more persons who feel unable to stop it from happening.*

45 Can I pause to make an observation about that definition now. Importantly, you will see that the national definition states, and this is a little bit lower in the paragraph, that:

*Single incidents and conflict or fights between equals, whether in person or online, are not defined as bullying.*

5 This is an important thing for the Commission to note in its further work in respect of  
the area of bullying of students with disability. It is submitted that in its further  
investigations and work, the Royal Commission should not feel constrained in  
respect of any recommendations it makes with respect to conduct which involves  
10 bullying-type behaviour in the ordinary sense of the word, whether it be a single  
incident or more.

So the ultimate goal, of course, should be to create a culture in which students with  
disability are not subject to bullying-type behaviour at all, whether as an isolated  
15 occurrence or more than an isolated occurrence.

15 CHAIR: Thank you for drawing attention to that definition. I should say that one  
reason for asking, and, of course, you reminded us of what is already in evidence, is  
that Queensland, at paragraph 20 of their submissions, state that there's no definition  
of bullying and harassment and it appears, in fact, there is at least some general  
20 agreement as to the minimum content of bullying.

DR MELLIFONT: That is so. So as we've indicated, the fact sheet refers to a  
national definition of bullying. Bullying is not statutory, as I understand it, which I  
think is the submission made by Queensland, but the relevance is, of course, in  
25 response to the comment you've just made, is that Queensland does have a working  
definition of bullying.

So, as I've just referred to Mr Lassig's evidence that there is no centralised data with  
respect to bullying, rather - sorry. Mr Lassig gave evidence at the hearing that there  
30 is no statewide data collected on bullying. And so it's submitted that a finding can be  
made to that effect, as we contend for in paragraph 99 of our submissions.

We go further in respect of this issue, and we submit that the Royal Commission  
might consider making an immediate recommendation that Queensland Education do  
35 collect statewide data on reported incidents of bullying, disaggregated to students  
with disability, First Nations students and students from Culturally and Linguistically  
Diverse backgrounds and report that data.

I'll speak a bit more about this. The collection of such data, in our submission,  
40 would enable the Department to see whether or not students with disability are being  
disproportionately affected by bullying, disproportionately the subject of bullying  
behaviour. It would assist the Department considering and determining causes and  
informing responses to such causes, in order to seek to continue to try to reduce the  
amount of bullying which occurs.

45 Now, the State of Queensland at paragraph 21 of its submissions submit that the  
collection of meaningful and reliable data regarding reportable bullying incidents

would be challenging for the Department. The fact sheet and the evidence records that records in one school, which is Queensland database, are to be maintained accurately in relation to any allegation of bullying. So there's already a requirement that the one school system keeps accurate data in relation to any allegations of  
5 bullying.

It would appear, therefore, that at least the building blocks for the collection of data in respect of alleged bullying currently exists within the Department of Education's own system. And that Counsel Assisting's submission as to a recommendation, that  
10 is that the data is collected on a statewide basis and including disaggregation, would appear to be an extension of the recordkeeping which already occurs within OneSchool.

So the State of Queensland may wish to, and may in fact be Ms McMullin's intention already, to provide this Commission with further information as to whether the records kept within OneSchool do contain a field which enables disaggregation to students with disability, First Nations students and students from Culturally and Linguistically Diverse backgrounds. And that information will assist the  
15 Commissioners to more fully assess whether there is immediate capacity to extend the OneSchool recordkeeping to a recommendation for statewide data. What is the capacity to extend this system, which is already in place, to make it a statewide data system.  
20

We as Counsel Assisting submit that clearly the reporting, the public reporting of such data, which is part of our recommendations, assists generally with the level of information available to the community and it of course assists, with respect, to accountability of a department.  
25

Now, in making these submissions, which are Queensland-specific, we want to expressly state that this is not to say the Royal Commission has explored other States and Territories in respect of bullying and found no remedial action is required. That's not the case. Queensland has been - we haven't done that yet. We're working on these things. But Queensland has been somewhat of a focus of the first two hearings on education, and Commissioners will recall that even in opening in  
30 Townsville two Octobers ago, a reason for starting with Queensland was that they had commenced their journey in respect to inclusive education after the Deloitte review. So I just wanted to make it clear that it's not that we have looked at the other jurisdictions and found no problems, we've not done that yet, and I also want to reiterate what I have said on other occasions, which is that we will be moving to the  
35 other States and Territories in our work; they will not be disregarded, they will not be ignored. We will be doing work with respect to the other States and territories. The preparatory work in that respect has commenced long ago before the Commission and is continuing to occur. So we will be going south and we will be going west.  
40

Now, another submission that the State of Queensland make is that a fundamental issue arises such as whether or not reported or substantiated complaints are sought to be included. The proposition is put that the submitted recommendation would not  
45

contextualise challenging behaviour by children, who, as a result of the disability, may be both a complainant and respondent to complaints of bullying. We assume that these aren't insuperable obstacles.

5 Further, the circumstances where a student is both a complainant and respondent to a complaint of bullying which has some connection with their disability, is information presumably that Education departments will want to have and analyse and use in informing its further work with respect to identifying and addressing causes of bullying, and are factors which might cause or contribute to a student with disability  
10 acting out in a bullying way towards others, and to factors as to influencing whether or not that student with disability is truly getting access to an inclusive education.

We have, within our submissions, indicated some possible future recommendations which, as we said at the commencement of submissions today, should be regarded as  
15 submissions as to further areas that the Commission should investigate and consider. We have, of course, received information through submissions, through anecdotal experience of individuals and advocates and other material - and the information that we have received across the Commission does indicate at least a threshold level that bullying of students with disability does present as an area of concern across  
20 Australia.

It would seem relatively uncontroversial to suggest that the reduction and preferably the elimination of bullying of all students, including students with disability, would and should be an area of focus for education providers. What is actually being done  
25 across educational settings in Australia is an area we submit requires further work and investigation by this Commission.

In the possible future recommendations that we've set out in our submissions, which, as I say, are areas of further investigation and consideration, the objective, the  
30 ultimate objective underpinning those suggestions is the prevention of any act of bullying towards students with disability. To that end, we seek a realisation of Quaden Bayles's hope. May Video 5 be played, please.

35 **[VIDEORECORDING PLAYED]**

DR MELLIFONT: ..... What would you like, if you were able to give a message to the new kids who haven't learned about your disability and don't understand how  
40 much it can hurt you when they say things about you, what would you like them to know now? What's the message you would like to give to them?

QUADEN: Just don't be rude to students who have disabilities, and just be kind and be nice.  
45

**[VIDEORECORDING ENDED]**

DR MELLIFONT: In respect of those proposed future recommendations, or possible future recommendations, we have received a brief response from New South Wales in their submissions. Their first observation is that what is submitted could not be achieved within six months and we would, as a Commission, of course, be very grateful to receive from the State of New South Wales the timeframe within which they believe those types of recommendations could be implemented and what is involved in assessing those timeframes.

The other submission New South Wales make is that the possible future recommendation requiring schools record and monitor incidents of bullying is not realistic. We accept the criticism made by the State of New South Wales in terms of the choice of word. The criticism made by New South Wales is that's not realistic and we - well, at least I assume that the reason that is said to be unrealistic is that the recording and monitoring of incidents might be read as seeking to incorporate incidents of bullying which are not known by the school. That's not what our intention was.

You would have seen in the fact sheet that the data recording requirement is to allegations of bullying, and that is certainly what we intended to convey by the reporting and monitoring. We provide that clarification now.

Can I move briefly to two further topics before passing to Mr Power. The first is the topic of complaint handling and other processes which has been dealt with at some length in our written submissions. There could be no doubt that it is a particularly stressful circumstance for a parent or a carer to be in the position of having to seek to and advocate for and resolve issues with respect to the provision of, say, reasonable adjustments for their child with a disability, or other issues concerning the treatment of their child with a disability.

The weight and impact on parents and carers should not be underestimated. As such, it would seem to be an entirely uncontroversial proposition that complaint handling processes should be easier to navigate, easy to access and involve collaboration as between parents and carers, students and the school, to seek to achieve the best outcome for the student, to enable that student to have real access, proper access to a quality, inclusive education. Amy spoke of reaching out for help, and this is a poignant example of the type of impact it can have on parents and students. Can V38 be played, please.

40

**[VIDEORECORDING PLAYED]**

MS AMY: That's exactly it. You're reaching out for help, and begging someone to help and look at it and support, and you get referred back to the situation that you're in already. So we had already been through those processes, we had already had

those discussions, we had hit a brick wall. We were looking for independent guidance and support.

5 **[VIDEORECORDING ENDED]**

DR MELLIFONT: It's submitted that further consideration of the methods by which complaints can and should be resolved is required, particularly to find the best way,  
10 which is sufficiently independent, culturally safe, culturally competent, person-centred, trauma-informed and underpinned by the goal of ensuring a safe and inclusive education and an approach which avoids or minimises the resort to litigation, which is costly, timely, stressful, is an important consideration to be considered in this respect.

15 COMMISSIONER ATKINSON: Dr Mellifont, shouldn't that need for independent guidance and support be recognised even long before there's a complaint to obviate the need for complaints right from the beginning of the child going into the education system? So that parents aren't under such intense pressure to fight for their children  
20 with the inevitable distress that the parent as well as the child experiences?

DR MELLIFONT: Absolutely, Commissioner. As we hear across areas of this Royal Commission, we keep hearing about the importance of early intervention and support, and I think your question, Commissioner, is directly to that point, is that  
25 support must be provided from a very early stage so you don't get to the stage of having to have to have complaints.

I then turn to the topic of principal discretion and accountability. Once again, this is dealt at some length in our written submissions. The evidence we heard, particularly  
30 with respect to Queensland, as it was a focus of the hearing, demonstrates the significant amount of discretion that principals have with respect to the education of students with disability, including as to the implementation of adjustments allocating funding and other resources, student disciplinary absences and the enrolment of students at a school and conditions of enrolment.

35 Now, we've heard on the one hand that this has resulted in a considerable burden on principals to have a sophisticated understanding of legislation and policy both at national and state level, and on the other hand that school autonomy may also mean that experienced principals may engage in tactical rule bending in order to pursue  
40 their own vision and agenda.

Clearly and hopefully, most principals simply don't fall within that category and we don't for one moment underestimate the burden that is placed on principals in discharging their functions with respect to all students. However, it is clear that with  
45 responsibility must come accountability, not only to identify if there's any intentional bending of the rules, but also to identify whether there's a lack of understanding of the rules leading to outcomes which adversely affect students with disability.

The Commission did hear evidence that there are concerns that accountability mechanisms for decisions that principals make are insufficient, and this is a further area for investigation of this Commission.

5

We've also taken into account that the alternative to autonomy at a school level is decision-making at a higher, more centralised stage, and that in itself can bring its own difficulties, including less knowledge and understanding of the particular needs of a student, and what's likely to work in a particular school environment.

10

We recognise the tension in considering the ongoing role for the discretions we have spoken of, but it seems clear that greater accountability measures are required, and as we've just submitted, this is an area we consider the Commission has further work to do in respect of.

15

May I hand now to Mr Power, please.

CHAIR: Thank you, Dr Mellifont.

20

Yes, Mr Power.

25

MR POWER: Commissioners, I want to commence with the opportunity presented by the implementation of the 2020 review of the Disability Standards for Education. Dr Mellifont QC spoke earlier regarding that 2020 review of the DSE. The DSE is subordinate legislation which sets minimum standards for the implementation of the responsibilities that education providers have under the *Disability Discrimination Act* 1992. The submissions I'm going to make are intended to supplement Dr Mellifont's observations.

30

The Commonwealth Department of Education, Skills and Employment issued a summary document in relation to the final report. It relevantly indicated that the Commonwealth would work with the State and Territory governments to do the following four things:

35

1. Make sure that the rules and policies that apply to education providers align with the standards.

40

2. Put information on every school website explaining the services and supports the school provides for students with disability.

45

3. Develop national principles and practices on collecting and reporting data on how students with disability take part in school education.

45

4. Conduct an audit on how well the DSE is followed.

Now, in their submissions, both New South Wales and Queensland have indicated they are aware of the proposed steps to implement the requirements of the DSE

review.

5 The State of Queensland suggested that the 2020 DSE review was "largely synonymous with the subject matter traversed by Counsel Assisting" and "where there is any overlay, it is submitted that the form of the 2020 DSE review recommendations be preferred."

10 In their response to the issues of disciplinary proceedings, gatekeeping and returning excluded students to school, Queensland notes that these are areas which will be the subject of implementation of the 2020 DSE review.

15 In response, we would say that rather than being duplication, the requirement for the Commonwealth and the States and Territories to work to implement the 2020 review of the DSE provides a platform for the implementation of what we submit are the more immediate and more detailed recommendations that Counsel Assisting propose this Commission will make.

20 Properly designed responses by the States and Territories to this Commission's ultimate recommendations and to those of the 2020 review of the Disability Standards for Education 2005, will result in synergy and greater efficiency in responding to the challenges identified, and it is critical that what the States and Territories and the Commonwealth address is the challenges, not merely the form of responses.

25 Put another way, a state or territory's response to the proposed findings, recommendations and areas of further investigation by this Royal Commission will aid the state or territory in their implementation of the recommendations of the 2020 DSE review.

30 As Dr Mellifont submitted earlier, each state and territory can make a decision to be a change leader in respect of these important matters.

35 Turning then to gatekeeping, gatekeeping is where a school prevents the enrolment of a student through delay, referral, or equivocation. The evidence before the Royal Commission indicates that some mainstream schools do prevent the enrolment of students with disability - sorry, we just had a bit of feedback there, I apologise.

40 The evidence before the Royal Commission indicates that some mainstream schools do prevent the enrolment of students with disability through delay, referral or equivocation, and that is where barriers other than direct refusal are used and parents and students are required to do far more than others to justify and to maintain their acceptance into their chosen educational facility. This can keep students with disability from receiving an inclusive education.

45 Across Australia, this is not a rare problem. A survey carried out by Professor Poed showed that of the 745 families surveyed, 28 per cent felt they were discouraged from enrolling their child with a disability in a mainstream school, while 10 per cent

of those surveyed said that their child's enrolment in a mainstream school had been denied.

5 Very similarly, the results from the Children and Young People Australia's 2019 National Education Survey showed that of the responses, 12.5 per cent of students with a disability had been refused enrolment in mainstream schools that they had applied to.

10 The effect of that on students and families is great. The Royal Commission heard from the lived experience of students who experienced gatekeeping based on their disability. I will ask that two extracts from the evidence be played, and they will be played one after each other. The first is from the student with disability Maria Scharnke, and the second is the perspective of a parent of a student with a disability, that is Sharon, the mother of Jack. I ask that Video 22, be played followed by Video  
15 23.

**[VIDEORECORDING PLAYED]**

20

MR POWER: How did you come to be attending Slacks Creek State school?

MS SCHARNKE: It came on recommendation from - to my family from Autism Support Networks in Victoria. However, this was not the first school we applied to  
25 or wished me to attend. My father is a Lutheran pastor, that's a minister of religion, and his first choice was that I attend a Lutheran religious school. Several schools were tentative about accepting a new student until they learned my father was a minister of their specific religious denomination, at which point they said they were thrilled and it would be an honour. I'm paraphrasing, I don't know if they said that.

30

Then they learnt that I had special needs. They said, "No, we can't accept her." They stated they had already hit their quota or they didn't have enough funding, and I was utterly rejected, thus I went to Slacks Creek State School.

35

**[VIDEORECORDING ENDED]**

**[VIDEORECORDING PLAYED]**

40

MS SHARON: ..... Lesley is really just amazing because she didn't --- she did this kind of out of her scope because she dealt with the primary schools, but she was just so involved with helping us with Jack and supporting us with Jack. So she suggested  
45 schools. I did ring a lot of the private schools thinking that there may be a better option. They all told me they don't take children like my son. I also rang the special school and said maybe that's where he needs to be because his grades are so poor but

his IQ was too high, and then in the end it was suggested by Lesley that ---

MS BENNETT: That he go to a high school.

5 MS SHARON: The most suitable one for him, and so that's where we went. Yeah.

**[VIDEORECORDING ENDED]**

10

MR POWER: In both of those cases, the rejections came from private schools or from a special school. However, the evidence suggests that gatekeeping exists in mainstream state schools.

15 Ms Emma Haythorpe, whose experience was with the Queensland State education system, explained the process of re-enrolment of students following their expulsions. Ms Haythorpe told the Royal Commission that the general trend she observed from schools in the Queensland State education system was delay and refusal. She also said that there were occasions where a student's enrolment was accepted only on a  
20 conditional basis such as if a different student was enrolled at another school and Ms Haythorpe told the Royal Commission:

*I can recall occasions when a principal would say that the student should try another school first, or that they would take student 'X', if another school took student 'Y'. As a result, there were many students who languished without  
25 access to education while schools were avoiding scheduling an interview with parents.*

Mr Lassig of the Queensland Department of Education gave evidence at the hearing.  
30 He said he was not aware of these methods being used in his group of schools but he acknowledged that having heard the evidence about informal methods of preventing enrolment, it was a matter of concern and something that the Queensland State Education Department needed to look at very carefully.

35 The efforts of the Royal Commission to analyse the extent of gatekeeping practices, part-time attendance and informal absences from school is made more difficult by the lack of public data maintained in an accessible form in respect of these issues.

The accessibility and the public data is an area for further investigation and  
40 consideration by this Commission, including the extent to which this data is collected, where it is held and whether it can be made available. However, given that there have been consistent reports from parents and students of gatekeeping practices in surveys, advocacy groups and to prior inquiries such as the Australian Senate Inquiry, there is evidence that gatekeeping practices are used, and that they are a  
45 barrier to students accessing a safe, quality and inclusive education. It can contribute to the educational neglect of students with disability.

This is an issue that each state and territory education department and independent schools should look at very carefully and produce a detailed plan to address it.

5 On this subject, Counsel Assisting's written submissions contain, one, a proposed finding, two, a proposed recommendation related to Queensland Education, and three, a number of areas of further investigation that it is proposed the Commission should undertake in relation to this identified problem.

10 Now, in their submissions, the State of New South Wales contends that there is zero evidence before the Royal Commission as the re-engagement of students with disability have experienced suspension, exclusions, or expulsions from school or experiences of gatekeeping in New South Wales."

15 That is not correct. It is correct that the evidence on this point focused on gatekeeping in the Queensland context. However, the experience of "Sam", who was a student in the New South Wales system, is relevant. Here is also reference to gatekeeping in the New South Wales school system in the statements of the academic witnesses. Further, the nationwide studies, that I've referred to earlier that were discussed with the academic witnesses and advocates, are entirely relevant to the  
20 New South Wales school system which, as is pointed out in New South Wales's submissions, is extremely large.

Both New South Wales and Queensland point to their respective acts relating to the admission of students in the education system. That is, the *Education Act 1900*  
25 *(NSW)* and the *Education (General Provisions) Act* of 2006, QLD. Both States indicate that their respective legislation mandates that students who satisfy eligibility requirements must be enrolled.

30 What the States' submissions do not address is whether the actual lived experience of students with disability is consistent with those statutory requirements. The evidence that this hearing heard indicates at least at an anecdotal level that that is not always the case.

35 In relation to the specific evidence in Queensland, both Ms Emma Haythorpe and Ms Ann Howlett, who are Queensland-based, gave evidence on their experiences with the Queensland Department of Education. I quoted earlier from the evidence of Ms Haythorpe. Ms Howlett also describes quite extensively, at paragraphs 51 to 58 of her statement, the delay and obfuscation by administrators at State schools that she's seen, which have resulted in the delay of students with disability that have been  
40 excluded. Therefore, in both New South Wales, Queensland and nationally, there is information to indicate that there may be a problem which needs to be further looked at, and one that is not answered by a reference to broad legislative provisions. And it is in that context that the proposed findings, the proposed immediate recommendation and the areas for future investigation by this Commission are made.  
45

As has already been said, the requirement by the States and Territories to implement the 2020 review of the Disability Standards for Education provides a platform for the

further recommendations of this Commission. Properly designed responses by the States and Territories to this Commission's recommendations will result in efficiency in responding to the 2020 review of the Disability Standards for Education but more importantly, in responding to the challenges that have been identified.

5

I turn then to the issue of low expectation and attitudinal barriers to full inclusion. Low expectation of students with disability presents as an attitudinal barrier to full inclusion. Such expectations can lead to neglect of the students' actual potential and hence, to discrimination. They are anathema to full inclusion.

10

The Commission received a very eloquent statement from "Leif". Leif is a young person with autism, auditory processing disorder and motor impairment. Leif spoke about their experience in primary and secondary schools, and Leif uses the pronouns "they" and "their".

15

One of the difficulties faced by Leif as a secondary student was the school's perception they could not achieve academically. I note that Leif very, very much wanted to achieve academically and go to university, so much so that they chose to do their senior years over the course of three years.

20

Leif's evidence was that the head of the Special Education Unit treated them as delusional in aspiring to university education. Rather than being encouraged to undertake classes that could lead to university admission, Leif stated they felt pressured to take non-tertiary courses at high school and seek to take other alternatives to enter university, such as a TAFE course after school.

25

Leif stated that they felt the school:

30

*..... trivialised my challenges by assuming that I was unable to understand the content of classes, not realising that what I often required was help processing the information.*

The evidence heard by the Royal Commission from academic and advocate witnesses supports Leif's personal experience about the existence of attitudinal barriers faced by students with disability.

35

Dr de Bruin told the Royal Commission that teachers continued to have misconceptions about the ability of students with disability, leading to the idea that their progress is inherently determined by their disability. A key finding of the Children and Young People Australia's 2019 National Education Survey was that families didn't believe the teachers had high expectations of the students and 40.5 per cent of students with disability were excluded from events or activities at school in the prior year and that was consistent with data collected in other years.

40

The most reported forms of exclusion were students being excluded from excursions, sports, incursions and NAPLAN testing. The witnesses of Ms Parker and Ms O'Flynn of QAI told the Commission they were regularly informed of students with

45

disability facing attitudinal barriers including stigma about the nature and effect of their disability and low expectation. In their joint statement, they noted that in their experience the capacity of people with intellectual and cognitive impairments to learn is underestimated especially in students who have communication issues.

5

The Commission will remember the evidence given by Alice in a video statement, and her evidence reflected the systemic problem that underlies this issue and I will ask that a video from Alice, video V30, be played.

10

**[VIDEORECORDING PLAYED]**

15 ALICE: What I'm trying to get across is that clearly with the system as it currently is, it is wrong to call the disability education sector truly inclusive. We're all still, as one homogeneous group, held back by the one-size-fits-all ideology. That is, we all have the same abilities and interests. It is this approach that's being perpetuated in our schools and our workplaces. This is the approach that we need to dismantle if we truly want to call our education inclusive. Still, this inequality is far less when  
20 compared to the blatant injustice that many of us still experience even before school starts - the struggle that is the process of enrolment. It was shown in a Senate inquiry completed in 2016 that many schools refuse or subtly try to turn away students with disabilities on the grounds that they cannot provide the student appropriate education because of the "special needs" or any "challenges" that might occur with that student.  
25 My own parents had to put forward a case to justify my so-called "mainstream" primary school enrolment, but it can't stop getting your name on a roll and someone to help you out in class.

30 **[VIDEORECORDING ENDED]**

MR POWER: Commissioners, what Alice said there encompassed much of what I seek to put forward as my section of the submissions.

35

A culture of low expectations is not going to be recorded in formal policies but it doesn't mean that it's not real. The school experience of a student with disability may be significantly impacted or even determined by the culture and attitude of the education and the school leadership. The extent of those problems are difficult to  
40 quantify given the lack of public data. However, the information before the Royal Commission demonstrates that although some schools are demonstrating a culture of inclusion, it is by no means universal.

The question is, how is a culture of inclusion created and then maintained? How are  
45 the barriers to proper exclusion reduced and preferably eliminated? This is an area of keen focus of the Disability Royal Commission and is the subject of ongoing work.

I turn then to the impact on students with disability who experienced barriers in education. Commissioners, we have spoken of the barriers that students with disability face. However, Public hearing 7 was more than about describing the barriers that students with disability face in obtaining a safe, quality and inclusive education. It was also about the impacts that those barriers have on students with disability.

In part 4 of our written submissions, we set out the impacts of those barriers upon the lives of the students with disability and their families who share their stories with the Royal Commission. These impacts demonstrate the very strong imperative that we act to get inclusive education right, and get it right, right now.

The impact of a lack of educational attainment was a thread in some of the sad accounts that were given. Sam had been suspended seven times by age 6, and as a consequence, his parents started home schooling him and they continued to do so for over three years. This meant that Sam was not able to have the benefit of professional teaching in his early school years, nor was he able to form a bond with his peers at school in those early years. And that was when his parents and he wanted him to have those opportunities.

We also heard from Jack. Jack spoke from the perspective of young adulthood. He spoke about how his many lost years of education made him feel. And there is an audio file which was played at the hearing and I will ask for the section of the audio, which is V39, which is Jack speaking.

**[VIDEORECORDING PLAYED]**

MAN: How do you know you feel you don't have any education really, and this is how you're going to live the rest of your life?

JACK: I'm restricted by an unbreakable chain, that's kind of how I kind of put it.

MAN: Yeah.

JACK: The --- even if I were to --- it can't break but it can be scaled.

**[VIDEORECORDING ENDED]**

MR POWER: Turning then to the impact on mental health and well-being of students with disability, in one form or another each of the lived experience witnesses spoke of the heavy impact that negative educational experiences had upon their mental health and well-being.

Kobe, who made very little academic progress since Grade 7, was diagnosed with post-traumatic stress disorder and suffered severe depressive episodes and heightened anxiety since leaving a particular school.

5

Maria Scharnke, who was a very high achiever and eloquent advocate, still considered that her experiences of the school system, particularly the early years of her schooling, when her autism was considered by her teacher just to be "naughtiness" formed the basis of some ongoing psychological issues. This included what she described as a continuing "intense mistrust of authority".

10

And I note that Leif also described very similar experiences as Maria Scharnke when their autism was ignored and described as mere naughtiness.

15

Turning then to the impact on transition to further education and employment. As I've said, going to higher education was very important for Leif, but Leif did not obtain an OP rank and so could not go to university even though that's what they wanted. Leif believed that with appropriate support they had the capacity to achieve good grades, but that support was not given. Leif, in their statement, describes being on a Disability Support Pension, experiencing depression, and thinking that they won't ever get a job unless they are extremely lucky.

20

Ms Parker and Ms O'Flynn of QAI also gave evidence, that based on their observations, that if a student has not experienced a decent education, they're not equipped to transition to future opportunities. Their self-esteem is shattered and in some cases their work ethic is lost.

25

I turn finally to the impact of life course and families of this loss of educational opportunity. Sharon told the Royal Commission that her son Jack doesn't have the life skills to get by on his own, and that she believes he will probably always live at home dependent on family support due to his lack of education.

30

I will play a section of Sharon's evidence from the hearing where she discusses the impact that Jack's lack of schooling has had on him, but also upon her and her husband as Jack's parents, and this is video V40. I'll ask that be played.

35

**[VIDEORECORDING PLAYED]**

40

MS SHARON: You know, you just need to recognise that what you do to these kids and, you know, once a word has been thrown, that word can affect their entire life, because you look at my son now, and he's trapped in our house because of things that happened to him when he was a young boy, and it doesn't matter how much we used to try to build him up when he came home, and tell him how wonderful he is and how funny he is and, you know, and how empathetic and such a beautiful soul he is, he would go to school the next day and get beaten down. So whatever we tried to do

45

that night, it was gone by the next day, and we're still trying to find that now to make him feel like he's a worthwhile person. He's only got Grade 4 English and Math skills, he can barely write his own name, but you talk to Jack and he's just so eloquent in his speech and he's such a gentleman and, you know, you get onto a subject that he's interested in, like animals or the universe, and he will talk for hours to you about it whether you want to listen or not, because he will make you listen. We have to let him because he doesn't talk to anybody else.

10 **[VIDEORECORDING ENDED]**

MR POWER: So in Sharon's words, Jack is trapped in our house due to things that happened to him as a young boy and describes the effect that that has on Jack.

15 The evidence given by Kobe's mother also suggested that without the ongoing support and commitment of his family to change things, Kobe also faces a limited future - a similar future with limited options.

20 These personal lived experiences demonstrate the importance of the task of changing the problems with education.

Thank you, Commissioners.

25 CHAIR: Thank you, Mr Power.

DR MELLIFONT: Some concluding comments.

30 The workload and pressures on principals, teachers and educators must be acknowledged. So too must the considerable efforts of many teachers, educators and principals who go above and beyond to provide a good learning experience for their students, including students with disability.

35 The system must be as good as they can be to support educators to ensure all students with disability receive access to a quality and inclusive education. They must be as good as they possibly can be to determine and to discern where there are problems, where there are failings, and where some teachers, educators or principals aren't seeking to do what needs to be done in order to meet the educational needs of students with disability.

40 It is clear that while some inroads are being made by some States in respect of the goal of inclusive education, there is considerable further work to be done, and this will continue to be a focus of the Disability Royal Commission.

45 Commissioners, they are the submissions of Counsel Assisting. We are in your hands as to whether you wish a short break or just continue straight into submissions by the State of Queensland and then New South Wales or the other way around.

Chair, we're obviously in your hands about that.

5 CHAIR: I think we'll continue for the moment and perhaps the appropriate course is to ask Ms Furness to give any or make any further submissions in addition to the written submissions of New South Wales, and there will be an opportunity for (inaudible) to ask any questions.

10 **SUBMISSIONS BY MS FURNESS**

MS FURNESS: Thank you, Chair. I propose only to make brief submissions in reply, and if there are any matters that any of the Commissioners or you, Chair, wish to be addressed in more detail, they can be taken on notice.

15 So my brief key submission is that the State submits that the complexities of the environment at the school, and Sam's challenging behaviours, have not been adequately addressed in the evidence or in Counsel Assisting's submissions to permit a finding of neglect in respect of Sam's education.

20 We submit that when all of the evidence, that is, not just limited to that referred to by Counsel Assisting, is taken into account, along with the definition adopted of "neglect", it is not available that a finding of neglect be made.

25 The Counsel Assisting's submissions say that the meaning of "neglect" is informed by Dr de Bruin, and if I can quote from paragraph 35 of her statement, she says:

30 *On this basis I suggest that either at a systemic level or at a school level, a failure to facilitate the education of children with disabilities in conjunction with reasonable accommodations consistent with the goal of full inclusion might be considered to constitute both discrimination and also neglect.*

I emphasise the words "suggest" and "might".

35 Counsel Assisting said this morning that whether or not reasonable adjustments were made in relation to Sam, were not considered by the Royal Commission. In our submission, fundamental to a finding of neglect would be that reasonable adjustments were not made.

40 Can I then deal with the submission that there has been a lack of engagement in Counsel Assisting's submissions with the complexities concerning the behaviours of Sam.

45 Firstly, the Counsel Assisting submissions contain very little detail of those behaviours, which is precisely why they were set out in detail in our submissions, not to emphasise that this was the main issue, but to deal with what we say was a deficiency in Counsel Assisting's submissions.

Secondly, Mr Potter gave evidence, and this is at transcript 173:

5           *In my experience as a principal and working with students with disability, I  
have never come across a person with as complex behaviours as this young  
man.*

10           Now, that statement was not taken up with him, but in our submission, that's a very  
significant statement by a man of considerable experience and that complexity hasn't  
been, in our submission, dealt with.

15           There was reference, in our submission, to escalation of Sam's behaviour and it was  
suggested that there was no evidence of that. Can I merely support to reference the  
report of Dr Sturgeon, 20 June 2016, where he spoke in terms of an escalation of  
behaviour.

20           Can I then turn to the legal obligations. Contrary to the submission that the State has  
elevated that to its main submission, on the contrary, again, there is reference to  
those obligations because they were relegated to a footnote and in our submissions, it  
must be taken into account that the State and the schools have legal obligations in  
respect of staff, other children, Sam, and the school generally, and those legal  
obligations belong in the report and not in a footnote.

25           Can I then turn to the adjustments which were made and about which there was  
evidence which didn't appear in the Counsel Assisting submissions and we submit  
should be reflected in the report. All of this material comes from Mr Potter's  
statement.

30           There was a full-time support learning officer to support his transition from  
preschool to kindergarten, that he received the highest annual allocation of funding  
with the eight students of autism at the school. That the principal decided there  
should be only one other child who needed adjustments in the class because of Sam's  
high need in Year 1, and there was a deal of reference to gates having been installed  
to deal with what his mother referred to as one of the issues which was absconding.  
35           So they are a deal of adjustments that were indeed made, and, in our submission,  
should be reflected.

40           We reject the submission by Counsel Assisting that we are ranking. There's no  
evidence to support that. There's nothing in our submissions. We are saying this is  
complex. You have to deal with the complexity of it. You've got to look at how the  
behaviour, worked with the rest of the school, and you've got to look at the  
obligations. It's not a simple matter of saying one trumps the other. It's about  
managing an understanding of the complexities. It's not simple.

45           Can I then turn to the use of the word "aggressive". We don't accept that that  
necessarily involves intent, but perhaps more significantly, it's language that was  
used both by Sam's mother and by Dr Sturgeon. It was used by Amy in her letter to

the Minister of 21 October 2016, referring to her son's behaviour as aggressive. It was also used by Dr Sturgeon in his report dated 29 January 2014.

5 Can I then just turn briefly to the proposed findings in relation to Sam. Dealing with them not on an individualised basis but looking at what they say systemically, there are - and it might be easier just to refer to our submissions - perhaps not. Might be better to refer to paragraph 33.59.

10 In relation to a and b, that is identification of reasonable adjustments looking at it systemically, as is clear from our submissions, we had mandated training in the Disability Standards for Education, and in part 3 of that it refers to defining and identifying reasonable adjustments. So those two matters have already been dealt with on a systemic basis.

15 Looking at the remaining, c, d, e and f all relate to the appeals process and the notion of suspension and expulsion, that, as is clear from our submissions, is under active review at the moment and there's no doubt that the evidence that has been accepted in these submissions in relation to Sam will be taken into account. So on a systemic basis, the State has or is addressing each of those matters identified in the proposed  
20 findings.

During the hearing, Mr Potter made very appropriate concessions, each of which has been accepted in these submissions.

25 Finally, it cannot be said that the State has, in its submissions, in any way, resiled from his evidence or the need for work to be done and, as we submit, that systemic work is well underway. So they are my additional oral submissions.

30 CHAIR: Thank you very much, Ms Furness. I will ask first Commissioner Mason whether she has any questions to put to you. Do we have Commissioner Mason online?

### 35 **QUESTIONS BY THE COMMISSION**

COMMISSIONER MASON: Yes, thank you, Chair. I do have three questions that I would like to ask, starting with New South Wales. So question one is since - given since 2014, the Commonwealth's remote school attendance strategy for all First  
40 Nations students has been an area of major investment because of significant concerns for these emerging leaders in Australia. I was keen to see information in your State submission on what it is currently doing and potentially will be doing in relation to First Nations students with disability in regards to suspensions, exclusions and expulsions.

45 I would also say that given our Terms of Reference expressly requires us to investigate the situation in CALD communities, are you able to provide this

information in regards to CALD students with disability in future submissions?  
Shall I go to the next question?

5 CHAIR: We might ask Ms Furness if she wishes to respond to that question. We'll deal with it one at a time.

MS FURNESS: Certainly. I did respond but perhaps we were muted. We'll have to take that on notice.

10 COMMISSIONER MASON: Thank you.

Secondly, given the disability - there seems to be some feedback that I'm getting from another location.

15 Given the Disability Standards for Education 2005 undertaken in 2020 by the Australian Department of Education, Skills and Employment, I had --- the focus is on the experiences of Aboriginal and Torres Strait Islander students and their families. I had hoped your State submission would have taken the opportunity to provide information on what it is leading in regards to First Nation students with disability,  
20 even in general terms. Are you prepared to provide this information in future submissions?

MS FURNESS: Student Behaviour Strategy March 2021 deals with that in some detail, Commissioner. And we certainly weren't asked to provide those submissions,  
25 but we will most certainly take that on notice.

COMMISSIONER MASON: Thank you. And finally, when I first came into this role as commissioner, one of the early conversations and material I was given was on the stigma of bad black kids in schools. The issue of funding and how that funding is  
30 provided, monitored and reviewed for First Nations students with disability is something of interest to the Commission. Are you prepared to provide this information in future submissions and also, can I request that for CALD students with disability? Thank you.

35 MS FURNESS: Again, that will need to be taken on notice.

COMMISSIONER MASON: Thank you very much.

CHAIR: Thank you. I will ask Commissioner Galbally.

40 Commissioner Galbally, do you have any questions?

COMMISSIONER GALBALLY: Just to follow on from Commissioner Mason in that last question, I would like to have that question asked about all children with  
45 disabilities, really, because Commissioner Mason's trying to get to the prejudice and stigma that children with disability, you know, received when they try to go to school. So that's just, I'm sure that will be on notice, but I would just like to enlarge

that a bit.

5 My second question is really to get more understanding of how restraint can be defended as a reasonable adjustment when it manifestly fails to remove barriers. So I would really like to hear more about that either at some point or in the future.

10 MS FURNESS: Certainly. The comment was made in relation to Sam initially, and if there's any other particular circumstance that you wish the State to address, we certainly will do so. But if it of a more general nature, is that the case?

COMMISSIONER GALBALLY: Yes. Yes.

MS FURNESS: We'll take that on notice to the extent we can.

15 COMMISSIONER GALBALLY: Thank you. My third question relates to models for independent complaints and appeals processes, and whether the State of New South Wales has any plans or is reviewing the incredibly difficult, stressful and pressuring models that are currently under way. I've heard about this in private sessions and read about this in submissions as well. And so the lack of independence  
20 has come up as a problem. And secondly, just following on from Commissioner Atkinson's question earlier, whether there are any plans to offer a support service for parents in trying to get their child into school, and then trying to negotiate with schools and with the wider system, like a support/advocacy service for parents.

25 MS FURNESS: Can I deal with the last question first. That I would have to take on notice. It's certainly the case that the State of New South Wales funds a number of disability groups to provide support in a number of areas, but in respect to parents in particular, if I can take that on notice.

30 In terms of the other matter, the complaints handling mechanisms, I note that the Commission is dealing with that in another forum.

The procedures that are currently the subject of review include the appeal procedure in relation to suspensions and Mr Potter properly conceded that there were  
35 deficiencies in the manner in which the appeal was determined, and that will certainly be a matter taken into account by the State in reviewing its procedures.

40 COMMISSIONER GALBALLY: Yes, I would like it to deal with bullying, you know, and many of the other issues that have been raised by senior counsel. Thank you.

CHAIR: Yes, thank you.

45 Commissioner Atkinson?

COMMISSIONER ATKINSON: No, thank you.

CHAIR: Ms Furness, can I take you to your analysis of Sam's case. Let me say at the outset I understand, I think, the complexity of the case and the difficulties that it would have presented to educational authorities, but I'm interested in how one reconciles the concessions made with your submission that these did not amount to neglect. Can I do this by going through the matters that, as I understand it, you accept.

The first is at 54 of your submissions where you accept or the State of New South Wales accept that the restraint of Sam was not a reasonable adjustment. That's correct, that you would adhere to that? Yes? You may be on mute, I'm not sure.

MS FURNESS: We accept that.

CHAIR: The second contention that you accept is that the system in place during Sam's enrolment lacked clarity and was prone to inconsistent and varying application.

The third at paragraph 6 is that it was inappropriate for Sam, having regard to his age and disability, to have been subjected to two suspensions of 20 days' duration.

At paragraph 62 you accept that there were defects in the process followed by the Department in the appeal and you accept, in paragraph 64, that the procedure then in place could disproportionately adversely impact students with disability. For myself, I have some difficulty how, in view of those concessions, you can avoid the conclusion that Sam sustained neglect, educational neglect by reason of the suspensions and the way in which he was treated, including being subjected to a restraint that was not a reasonable adjustment. Perhaps you could help me out.

MS FURNESS: Certainly. I may need to repeat what I've already said, Chair, but as we understand, the definition of "neglect" that has been informed by Dr de Bruin's statement, that includes an understanding of whether or not reasonable accommodations in her language or adjustments were made, and that, according to Counsel Assisting this morning, has not been resolved by the Royal Commission.

CHAIR: But you've conceded that there was not a reasonable adjustment by the application of restraint.

MS FURNESS: On that occasion, that's correct, Chair.

CHAIR: I'm not sure that your submission answers that aspect of it. If a child aged 5 - I'm not sure whether Sam was 5 or 6 at the time - is subject to a restraint which is not a reasonable adjustment, it was not an appropriate application in effect of force, I find it a bit difficult to conclude that you need to go further as far as reasonable adjustments are concerned, given that treatment.

MS FURNESS: Our submissions are that that alone is not sufficient for neglect in circumstances where other reasonable adjustments, which were made, had not been

taken into account, and there's not been any finding in relation to reasonable adjustments as a whole.

The State accepts ---

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CHAIR: Sorry, can we pause there. Let's assume that there were other adjustments that were characterised as reasonable. Once you accept that the way in which suspension was applied, the way in which the appeal procedures failed, I'm still having difficulty understanding how, even on the assumption of other reasonable  
10 adjustments, this did not constitute neglect. The end result must be, mustn't it, that Sam was denied educational opportunities improbably?

MS FURNESS: The Royal Commission's adopted on the basis of its being informed by Dr de Bruin, who's only suggesting that something might be considered and,  
15 according to her evidence, in conjunction with reasonable accommodations consistent with the goal of full inclusion. There's no doubt, and it's been conceded by Mr Potter and it's certainly accepted in the submissions, that restraint or the reference to restraint as a reasonable adjustment should not have been made. But that does not constitute neglect, in our submissions, and for the reasons I gave earlier  
20 in relation to a number of matters of complexities.

In our submission, all of that should be taken into account.

CHAIR: Yes. Go ahead.  
25

MS FURNESS: All of those matters should be taken into account. The issue with Sam's school inappropriately identifying, in our submission restraint as a reasonable adjustment does not alone, constitute neglect. One has to consider the complexities of all of the evidence and on our analysis, we say a finding of neglect should not be  
30 made.

CHAIR: I should make it clear that I don't think I've suggested that the restraint of itself constituted neglect. What I'm suggesting is that denial of educational opportunities to Sam by a process that on the concessions made on behalf of New  
35 South Wales appear to have been manifestly flawed. That constitutes neglect. But anyway, I think I understand you and I think you understand me. So perhaps we could move on.

Can I ask you, please, about the mandates all school leaders must complete training.  
40 That is something that is stated in paragraphs 15 to 17 of your submissions and I think you repeated it in your oral submissions. This may be something where my understanding is deficient, but how has the Department mandated this training? Do we find that in the evidence in detail?

45 MS FURNESS: I understand it's in the Inclusive Education Statement that was released after the hearing completed in March 2021, and others might well be able to find where that is said, but that's my understanding of where it comes from.

CHAIR: Perhaps that might be clarified in due course.

MS FURNESS: Certainly.

5

CHAIR: Yes, then I would also be interested to know how, if it is a mandatory requirement, how it is enforced and whether the training is intended to be a substitute for a revision of the procedures to provide guidance to decision-makers as contemplated in the DSE. So perhaps both of those matters might be considered and you can let us know just what the position is. Thank you.

10

MS FURNESS: Certainly.

CHAIR: Thank you. On the question of bullying, I think you heard the discussion earlier this morning that there is a national definition of "bullying" --- not in legislation, certainly, but apparently a national definition that has been agreed by educational authorities. I just wanted to ask whether that, in any way, would modify the submission as I understand it, that having a policy on bullying would encounter the substantial, if not insuperable difficulties. Does that alter the position of New South Wales in any way?

20

MS FURNESS: The response that has been made to that possible future submission is limited to the requirement that there be a record and monitor of incidents of bullying. That while bullying can and has been defined to actually have somebody available to record each and every incident, is quite different. If it's a complaint, there certainly will be some record and monitoring process. But the complexities of recording instances is what the brief preliminary response to that recommendation goes.

25

CHAIR: Thank you. Having regard to Dr Mellifont's explanation of a verbal infelicity there, may we take it that New South Wales is either undertaking a process of collating data on complaints about bullying, or would be prepared to give favourable consideration to such an approach?

30

MS FURNESS: Certainly take that on notice, Chair.

35

CHAIR: Thank you. Can I then ask you some general questions. Dr Mellifont made it clear that this hearing was not about what are described, I think, in your submissions as special purpose schools established under section 29(1) of the *Education Act*. That provision allows for the establishment of schools for children with disability. And I don't want to go too far into that but I am interested in the approach that is taken by New South Wales. I want to make it clear that I'm not expressing a view about any of this but I just want to understand the position of New South Wales.

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45

You refer at paragraph 118 to the definition of "inclusive education" in the Disability Strategy, a living document that is published by the New South Wales Government.

And I just might read that out because it is something of interest.

5 *Inclusive education means all students, regardless of disability, ethnicity, socioeconomic status, nationality, language, gender, sexual orientation or faith, can access and fully participate in learning alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs.*

10 And that explanation or definition is repeated in the Inclusive Education Statement for students with disabilities and is said to be informed by article 24 of the *Convention on the Rights of Persons With Disabilities*.

15 You also, or the submissions also make the statement "Inclusion is a practice, not a setting." I just wonder if you could explain that by reference to the definition of inclusive education that is adopted in your submissions.

20 MS FURNESS: There's not more I can say about that at the moment, Chair, other than that is the position of the Department of Education within the State of New South Wales and is reflected in their approach to inclusion in education. If there's any specific question we can take on notice, Chair, we certainly will.

25 CHAIR: I just wanted to know what that statement actually meant because I didn't and don't understand it. Perhaps somebody could take that on notice and expand it. It may be related to the next inquiry, which is a broad one, and you may want to take it for further consideration. I wonder how the definition of "inclusive education" is seen by the State of New South Wales, the definition I've read out, as consistent with what appears to have been an expansion of schools for special purposes established under section 29.1 of the *Education Act*. I would be interested in how New South Wales explains or supports the definition of "inclusive education" with the role that is played by special purpose schools. So perhaps that is also something that might be taken under consideration as it may become relevant to other issues that the Royal Commission is going to investigate.

35 MS FURNESS: Certainly.

40 CHAIR: I think there's just one more point. You mention, I think, that the procedure that was applied in Sam's case is under review. I think you say that at paragraph 73. Are you able to help us with how far that review has gone? I'm sorry, you seem to be on mute again.

MS FURNESS: As I understand it, at your end, you're muting us and it's a question of when we can unmute ourselves.

45 CHAIR: It's not me!

MS FURNESS: I was speaking generally, Chair.

I will have to take that on notice. I have no instructions as to that.

CHAIR: Okay, thank you.

5 Perhaps there's one other general point I might ask you about, and I will ask also Ms  
McMillan about this. The proposed immediate recommendations and possible future  
recommendations in Counsel Assisting's submissions are framed as  
recommendations that are directed to somebody. They may be directed to New  
10 South Wales or Queensland or occasionally to others.

10 You and Queensland, both New South Wales and Queensland, have raised the  
legitimate point of how does the Royal Commission's inquiries gel, mesh with all the  
other things that are happening in the sphere of education for children with disability,  
including the *Disability Standards* that are the subject of the review in 2020.

15 The Royal Commission faces the difficulty that there are, after all, eight jurisdictions  
in Australia - six States, two Territories. I know that Dr Mellifont indicated that  
further work will be done and that is undoubtedly true, but it's equally true that no  
matter how long this Royal Commission goes, it will not be possible to hold  
20 exhaustive hearings into the practices of each of the jurisdictions, so we will have to  
find other ways to investigate some of these matters.

25 I wonder whether some thought could be given, by not only New South Wales and  
Queensland, but we ask others as well, to a cooperative approach where there is a  
coordinated effort to look at the issues that have been identified, where the States can  
cooperate with each other and us during the life of the Commission to address the  
issues that have been identified.

30 I'm not asking you to obviously answer that now, but I would like you to take that  
away and get some instructions on it and come back, because it does seem that is at  
least a possibility to the Commission simply making recommendations directed to  
States, some of which may not be altogether enthusiastic about implementing them in  
the short term. So that is something I would be grateful if you could get some  
instructions on and in due course come back to us, is that a feasible proposition or  
35 not.

MS FURNESS: Certainly. The timeframe might be interesting.

40 CHAIR: Timeframes are always interesting, Ms Furness, I have a particular interest  
in one.

45 COMMISSIONER ATKINSON: If I can just add to that if one of the things that you  
could consider, Ms Furness, and Ms McMillan, when it comes to your turn, in that  
kind of approach is the matter I mentioned earlier, that inevitably there seems to be  
great tension and therefore distress caused to families by their interaction, the  
interaction of families with the child with disability and the education system. And if  
thought could be given to strategies that would reduce the unnecessary antagonism of

that relationship where individual parents find themselves having to fight a system that they don't understand and that appears hostile to them, and if you could add to the thoughts about the future, the ways in which that kind of relationship could be repaired across the board, because in the Commission we see it time and time and  
5 time again. We saw examples of it in the last hearing, we see examples of it constantly in private sessions. So it's a huge issue that needs to be considered. It's not a question, it's a request that you consider that as well.

10 MS FURNESS: Thank you. That will certainly be considered.

CHAIR: Thank you, Ms Furness. Is there anything in the light of the questions that you wish to say?

15 MS FURNESS: The only matter is the timing. There's a lot of matters to take onboard and perhaps we need to discuss with Counsel Assisting the timing of responding to these questions.

20 CHAIR: I'm sure that Dr Mellifont would be happy to engage in that discussion. Thank you, Ms Furness.

Now we have two alternatives. One is to stop and have lunch. The other alternative is to press ahead because we have Ms McMillan's submissions to deal with. Perhaps I might ask Dr Mellifont, is there any difficulty on Brisbane's end. I don't want to put an undue burden on people, staff and so forth, if we have been taking too long.  
25 But if on the assumption we finish perhaps no later than five past 1, would that be acceptable?

30 DR MELLIFONT: Yes, Chair. From Brisbane, the answer to that is yes and our preference certainly is to press on now.

CHAIR: All right. Unless somebody else wishes to raise an objection, what I will do is ask Ms McMillan if she has to make any additional comments in her oral submissions in addition to the written submissions that have been filed on behalf of the State of Queensland.  
35

DR MELLIFONT: Thank you, Chair. I'll sit down.

#### 40 **SUBMISSIONS BY MS McMILLAN**

MS McMILLAN: Thank you, Chair. Yes, I'm confident we can probably wrap up by that time, and I will make some preliminary comments that I hope might streamline some of the matters you've raised with my learned friend Ms Furness.  
45

There seems to be some apprehension about the role of, I'll call them the DSE findings and recommendations. What we're really effectively saying is firstly there's

no devolution of our responsibility, the State of Queensland, to the DSE. One of the issues that we raise is one of a pressing concern of all commissions of inquiry have to have recommendations implemented. There's no doubt, as a matter of logic, that where there is alignment between something like the DSE and this Royal  
5 Commission, that there is a much greater chance of those matters being implemented.

Can I then move on. We say also the DSE has, in some ways, done some work that, with respect, Chair, you're talking about with other States and Territories because it  
10 was a bespoke process. There's discussion about how the process was to undergo, it was very wide consultation with States, Territories, Indigenous bodies and other interest groups. We say that apart from your Terms of Reference, that what is said there is of significant import and naturally needs to be considered by the States and  
15 Territories, but given that there has been consultation no doubt assists this Royal Commission's recommendations that it makes.

Can I also go on to say that Queensland doesn't necessarily dispute some of the findings and recommendations per se, but it's the way --- the timeframe and the way they are framed that we have some difficulty with.  
20

So if I can take you, as briefly as I can, to the issues, for instance, of bullying as just one, perhaps the submissions didn't make it clear. Our point was that the definition of "bullying" and "harassment" are not made in the submissions of Counsel  
25 Assisting, so whilst Queensland adopts a national definition, we're not sure whether Counsel Assisting is using that definition, or not; and, furthermore, "harassment" is a term that is capable of many nuanced meanings, and I can, for instance, give you one, which is the use in domestic violence legislation where there is considerable debate at times over what that actually covers in terms of conduct.

30 So the other aspect that we have some difficulty with is that it's, as we understand it, reported incidents. What we were pointing to was that it's much more, we would think, viable for substantiated complaints, because there's no doubt that you could have vexatious complaints by whether they're students, parents, others involved in the school process. We are certainly not saying it would not be useful --- I'm using a  
35 double negative there --- to collect some data but it is what you collect and how you do it.

So we say we can't support recommendation in its current form, we would need to go through exploration of policy amendments and resource investments prior to doing  
40 this statewide. There would also need to be significant consultation with stakeholders and, for instance, looking at parents, advocates, staff, and by that unions, for instance, as to how that might be implemented.

CHAIR: Would you mind if I just interrupted for a moment there.  
45

MS McMILLAN: No, I have a feeling you'll do it anyway, Chair, but that's fine.

CHAIR: In any case, I will take that as permission to go ahead.

MS McMILLAN: Yes.

5 CHAIR: You've criticised, perhaps with justification, the absence of a definition,  
and you said you're responding to the particular submission that is made by Counsel  
Assisting. That I understand, but from my perspective --- I can't speak on behalf of  
other Commissioners --- what I had hoped, actually, would be that Queensland  
10 completely that bullying is a major problem, we need to address it, this is what we're  
doing, and this is how we propose to assist the Royal Commission to solve the  
problem." There does seem to be, if I may say so, somewhat a negative approach in  
taking the Counsel Assisting's submissions as kind of a target to pierce with barbed  
arrows.

15 MS McMILLAN: Well, I don't necessarily want to debate that, Chair. I'll say this,  
that the tone of the submissions in some ways pointed towards Queensland and New  
South Wales are rather negative in their tone, shall I say, and furthermore, we had  
limited time to be able to respond to these issues so that we've come back with  
20 highlighting some of the issues that we see with the proposed findings and  
recommendations at this stage.

So, for instance, it may well have unintended consequences. So, for instance, a child  
who displayed challenging behaviour, as we've mentioned there, may be a  
25 complainant but also a respondent in a different complaint. So there needs to be  
some real thought around this, that there's not particular stigmatising of children with  
disability who display challenging behaviours.

30 So it's not that we don't consider there is no problem with bullying, it's a way to  
constructively address that. Now, if the Commission wants to engage with  
Queensland on that, of course, we would come back with some constructive wording,  
but we're responding to what has been put out to us and meeting it as best we can.

35 CHAIR: Let me help you be constructive. What I suggest you might do is address  
the question of whether Queensland accepts bullying as a problem in the State for  
children with disability, and tell us what Queensland's view of that is. And if  
Queensland could also address whether it accepts that the collection of data on  
bullying is desirable, and if so, what approach it suggests should be taken to the  
40 collection of data, particularly having regard to data that is already collected in one  
form or another, the latter comment being a reference to what Counsel Assisting said  
in her submission.

MS McMILLAN: Yes. I will need to take that on advice because I don't - I can't  
assist you at the moment without the data ---

45 CHAIR: No, no, I'm not asking you to assist at the moment, I'm assuming you will  
take that on notice.

MS McMILLAN: Yes, and for instance how it may be recorded in one school. I understand there are difficulties in being able to disaggregate that data and, of course, it's my understanding it's more likely to be substantiated complaints. But, again, we will need to take that on notice, Chair.

CHAIR: Thank you.

MS McMILLAN: Can I just say that following the review of education of students with a disability, the Department of Education conducted an 18-month review. So this was a review of the Deloitte Review, if I can put it that way, of all student discipline procedures during 2018-19. New procedures were released in January 2020. This was a major review, far more comprehensive and deep than is typical of a standard three-year cycle. So the --- and as you can imagine, it required a change of management process, intense professional support, resources, training, ongoing consultation.

If we can add to that, of course, the additional requirements under our reasonably new Human Rights Act. So the point is that when we talk about dates, a review would commence in 2022 and be available in 2023 because if you've got procedures that have only been rolled out in January 2020, you need some time, one, to embed them but, two, obviously, to give them time to see whether they're effective. That's how we explain the date. It is not a delay, it is part of a process of rolling things out.

In terms of adjustments, again, we don't --- Queensland does not oppose, in principle, the recommendations made in terms of adjustments. But, again, Queensland is already working and works --- I withdraw that. Is supportive of the spirit of the recommendation and work is already under way pursuant to the 2017 Disability Review by Deloitte. And I particularly, and we can give this in writing, some of the recommendations of Deloitte that we are implementing.

Now ---

CHAIR: Again, if I may ask, I think we're familiar with the Deloitte recommendations which were in evidence and were the subject of some discussion. You say that, and I'm not querying the accuracy of it, but you say that there are moves afoot to implement those recommendations. Do we have the details of how far those efforts to implement the recommendations have gone or is this something that is a process under way and we will await a result?

MS McMILLAN: Can I tell you that I will need to take that on notice. I know, and we refer in our submissions to we've given quite comprehensive notice --- questions that were taken on notice on a number of issues. So I would need to check whether you have already that information within the Commission or whether we need to supply that to you. But if I can take that on notice today.

CHAIR: Yes, certainly.

MS McMILLAN: And so if I can just move on. The other aspect we say about adjustments to students with disability is that, of course, we have some legislative imperatives which we have indicated in the submissions, in our written submissions.  
5 So, again, those things are always involving considerable discussion with stakeholders and, again, it takes some time to roll those out. And I note that the DSE also specifically refers to some adjustments.

10 Now exclusionary discipline, again, the Department supports the spirit of the recommendation and would consider that in the next cycle of their review due to commence in 2022. Can I also remind you, and this was taken on notice by Mr Lassig, and we provided, under the questions under notice, under hand of a letter of 30 October to Mr Markus, where you will perhaps recollect Mr Lassig talking about  
15 excluding children, et cetera, and the positive behavioural learning and the immediate impacts that was having in terms of reducing those numbers of children with disabilities. So we say that that should be borne in mind in terms of any recommendation made. I'm sorry, I'm moving fairly quickly. I'm just trying to ---

CHAIR: That's fine.  
20

MS McMILLAN: Gatekeeping, Mr Lassig, and we say he was a very impressive witness, made appropriate concessions where he needed to. He's very experienced, clearly, in the area of children and students with disability.

25 The gatekeeping issue, again, we don't have a problem with the spirit of the recommendation, but, again, we do have some legislative imperatives with that. Again, we hear of two witnesses, I think both former employees of Education Queensland, Ms Haythorpe for about seven months, as I understand it. I don't say  
30 that it hasn't happened, issues of gatekeeping, but, again, those are matters that, as I say, there's some legislative imperatives that obviously need to be taken into account and the recommendation, as it's currently formed, we say may need amendment to legislation to do that which, as one knows, is not necessarily a quick or straightforward process.

35 Can I go to funding briefly for students with disability. That is a huge topic. It was covered fairly briefly, I would say, by Counsel Assisting this morning. You had very detailed evidence from Ms Dunstone, if you recollect all the way back in 2019, about that. Mr Lassig gave details of it in his oral evidence. He also took it, questions on  
40 notice, and that was, again, produced by Queensland to the Commission outlining the different model of funding that exists.

So, again, I refer to those for you to look at. But it's certainly the case that Mr Lassig said at page 432 of the transcript of 16 October, this was a question by you, Chair,  
45 line 19:

*Mr Lassig: I understand that, and I guess what's happening as part of the Nationally Consistent Collection of Data, is that all students, regardless of*

*whether they have a disability within EAP, that's all put to the side and it's about what are the frequency of adjustments for those students that are being provided.*

5 So it's clearly something that is moving along in terms of funding for students and we support the spirit of the recommendation, again, but with an extended timeframe it would have to be three to four years for the reasons that I've already outlined to the Commission ---

10 CHAIR: In your submissions you say two years. So that seems to have blown out to three or four.

MS McMILLAN: I think maybe that --- I may have this mixed up. That would probably be the time within which it would be reported rather than a process of review, if I can put it that way.

I think the other thing that perhaps should be borne in mind, that not all adjustments require funding, of course, and so that when we look at the term we need to look at it also in the broadest possible way. And whilst there's some, it seems, criticism by  
20 Counsel Assisting of the autonomy of principals, if you look at page 41 of the DSE, and I will leave that with you to look at it, there is actually evidence from this Royal Commission about advantages in terms of autonomy by principals.

So we say that is also a topic covered by the DSE standards and I can say schools are already provided with and can access a range of resources to make adjustments and I should say work is presently under way to review the resource allocation model which, of course, includes the EAP guidelines.

But, again, we would need to look at experiences in other States and Territories and a review undertaken with fidelity will take up to two years to complete followed by a transition period and, of course, one can't divorce it from the fact that with the National Disability Insurance Agency, there are issues touched upon by the DSE about cost sharing and issues such as that. So it's obviously quite a complex area. But there is no doubt that principals do, and can seek additional funding even if  
35 students and children don't fall within the categories as outlined with the EAP. So we have problems where that recommendation is heading, if I can put it that way.

Restrictive practices: Queensland's only published its first restrictive practices policy in January 2020. So, again, that would be considered as part of a revision of policy  
40 in 2022.

Teacher resource and training: there will be a revision and, again, that should be done within two years. We say it is simply not practicable, as Counsel Assisting has contended, that it should be done within a period of 12 months. Again, it would be  
45 issues that would need to involve stakeholders and also just the viability of doing so. And we note again there are recommendations in the DSE about issues of training for all staff.

Can I also draw your attention to the information given under notice by Mr Lassig which also has details, specific details of training to be undertaken.

5 CHAIR: Is there actually mandatory training in force in Queensland at present?

MS McMILLAN: Mandatory training of principals or teachers, Chair?

CHAIR: Principals.

10

MS McMILLAN: I will need to just check that and as usual I've displaced some papers that I'm looking for. Just excuse me. Paragraph 52 of our submissions, some training is not mandatory. Principals are currently required, you will see there what they are to undertake.

15

CHAIR: Yes. It doesn't seem to address some of the things that have been identified in Counsel Assisting's written submissions.

20

MS McMILLAN: No, I accept that but, again, it would be something that, again, one would think if you're looking at mandatory training, and with the mention by Counsel Assisting of the substantial obligations on principals and teachers, that it's something that would need to be looked at carefully in terms of what would be included. I particularly was looking for the reference by Mr Lassig on a question on notice about training and professional development for principals and he outlines there in a couple of pages about the training that currently exists for all staff and also for principals. So if that's --- that should be of assistance to you when looking at the current Queensland position.

25

30

I also wanted to say, my submission in passing is the other particularly important issue raised in the DSE is it concentrates on early childhood education as well as vocation and tertiary which we say are important aspects. If you can remember back to October 2019, Ms Dunstone talked about the importance of that early childhood education, both the ascertainment but also the importance that it plays for children moving through the system, and as I understand it, how to dovetail that perhaps with assessments under NDIA at an early time. My recollection is also she did talk about some particular issues with Indigenous children in terms of early childhood and, again, I commend the DSE in relation to its concentration, as I said, on early child

35

40

Just excuse me for a moment, please. Can I also just say in terms of moving away from an EAP model, there will still need to be some classification in terms of meeting funding models. So whilst one readily understands the concern about children falling within those categories of EAP, nonetheless, if you're looking at funding, there still needs to be some classification is our position.

45

Unless there's anything else, Chair, or other Commissioners, I ---

CHAIR: I'll ask the Commissioners whether they have any questions to put to you.

5 First, Commissioner Mason.

### **QUESTIONS BY THE COMMISSION**

10

COMMISSIONER MASON: Yes, thank you, Chair. I had the same three questions for Queensland. It may --- I can, if it may help, provide those questions through to Dr Mellifont who can provide them through to Queensland.

15 MS McMILLAN: That might be helpful. My memory is not that good to go back about 10 or 15 minutes, I'm afraid. But certainly, of course.

COMMISSIONER MASON: Thank you.

20 CHAIR: Thank you. Commissioner Galbally, do you have any questions?

COMMISSIONER GALBALLY: I'm very interested in the tracking of the 2017 Deloitte review recommendations and especially, or all of them, really, and I just --- I guess I wanted to say from the outset how terrific it is that Queensland  
25 commissioned that and has that policy. I just wanted to acknowledge that.

MS McMILLAN: Thank you. My clients will be very pleased to hear that.

COMMISSIONER GALBALLY: I'm very interested in gatekeeping and the  
30 tracking and not --- in addition to what's been mentioned in the report, also enrolment, gatekeeping around enrolment specifically. So I'd love to get anything, any tracking of where students have been excluded and where they've been recommended to go as well. That would be very good.

35 I'd like to understand more about positive behaviour learning and the rollout of that by the State, too.

MS McMILLAN: Mr Lassig, as I said, in those questions on notice, went into some detail about the positive behavioural learnings but certainly, we can add to that, I'm  
40 sure.

COMMISSIONER GALBALLY: It's more the rollout of it being available and part of the training question, too, that it's also training in those sorts of matters.

45 And then my final question is, again, about complaints handling and appealing and independent --- whether there's plans in Queensland to set up an independent panel that's independent of the education department. And whether there's also any

suggestion of support for parents both in getting their children into school and into supporting them to stay at school in issues of conflict with the school.

5 MS McMILLAN: Yes, can I say you will find some answer to that at page 3 and over in Mr Lassig's answers to questions on notice and you will notice, for instance, things like the Autism Hub, et cetera, but also embedding with it the issues about students being involved in decisions made and also the DSE, as you will see, spends quite some time addressing issues of complaints and also voices of students in that.

10 COMMISSIONER GALBALLY: Yes. My question is more about the suggestion that came through the hearing about an independent panel so that it's independent of the Department. And the positive behaviours question is really about all schools having that training, not to have to default to the Autism Hub.

15 MS McMILLAN: And I'm doing them a disservice. I was just pulling that out as one example. It's clearly his answers are more comprehensive than that.

COMMISSIONER GALBALLY: Yes, yes.

20 MS McMILLAN: So representation on student bodies and committees. There's a whole range of issues. I was just pulling one example out.

COMMISSIONER GALBALLY: I will frame that question very carefully with senior counsel and get it to you.

25 MS McMILLAN: Yes, thank you. That would be terrific, thank you.

CHAIR: Thank you, Commissioner Galbally. Commissioner Atkinson.

30 COMMISSIONER ATKINSON: Ms McMillan, as I mentioned to Ms Furness, I'm interested in the State of Queensland's policies and strategies, whether they exist or whether they should be developed, for reducing the distress that we keep hearing about from parents and carers of children with disability having to deal with and fight for the educational rights of their children in what often appears to them to be a hostile and adversarial system. So I'd be interested in your addressing that on notice.  
35 Thank you.

MS McMILLAN: Thank you. As I say, I can't comment on what has been said in other places, but we can take that on notice.

40 COMMISSIONER ATKINSON: Thank you.

CHAIR: Thank you very much. Ms McMillan, I've just got one question that really relates to the question that I asked Ms Furness. I take it from what you've said that it is likely that Queensland would be prepared to participate in a cooperative process if the Commission set one up in which States and Territories were involved to address some of these issues but that's something that you might take on notice and obtain  
45

some instructions.

MS McMILLAN: I can say this, that there clearly has been cooperation going on. The DSE is clearly one example of that. But as I understand it, there are  
5 communications and discussions that are had on an ongoing basis about policy issues. So that's probably all I can say today.

CHAIR: That's all right. You can by all means take it on notice. One of the things, of course, one has to take into account with the DSE review and report is that, in a  
10 sense, it's just a starting point. It leaves implementation, development of ideas to the States and Territories and it really just sets up a framework. There are some things that the Australian Government is meant to do under the recommendations but a lot of what is what proposed really rests with the States and Territories under very  
15 general guidelines provided under the recommendations. But that's just the framework.

MS McMILLAN: I understand that. Can I also say that because obviously the States and Territories still need to respond to the DSE, that's part of the reason why the time limits sought by Counsel Assisting for implementations we have just said  
20 are not realistic, just can't be done in the time.

So, yes, absolutely, in terms of cooperative work but we do have difficulties with time limits, et cetera, which, as we say, only appeared in Counsel Assisting's submissions. Unless I can assist you, thank you.  
25

CHAIR: Thank you very much. Thank you, Ms McMillan. Dr Mellifont, I take it there's nothing more for us to do today?

DR MELLIFONT: No, I will liaise with Ms McMillan and Ms Furness in terms of  
30 how much time they will need. They obviously will need to get instructions about how much time they will need. May I very quickly thank my other Counsel Assisting for their considerable hard work and effort and can we each, as Counsel Assisting, extend our gratitude to the hearing team who have assisted us in  
35 developing the submissions for today, OSA and policy, and at the risk of singling anybody out in particular, I've been particularly grateful for Ms Yates' hard work and long hours over the last couple of weeks. Thank you.

CHAIR: Thank you very much.

40 I would like, on behalf of the Commission, to echo the words of Dr Mellifont and express thanks to Counsel Assisting the Royal Commission and to OSA and all staff who have participated in preparing for this hearing.

I would also like to thank Ms Furness and Ms McMillan for presenting their written  
45 submissions and their oral submissions in an economical fashion that has enabled us to finish more or less on time.

Thank you very much to all concerned.

We'll now adjourn the Commission. The next time the Commission will convene, with a different set of Commissioners, not entirely, but not precisely the same, will  
5 be on 17 May to consider the Australian Government's response to the rollout of the vaccines for COVID-19. Thank you.

**HEARING ADJOURNED AT 1.09 PM UNTIL MONDAY, 17 MAY 2021**

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