

Inclusive education

This document provides high-level comments and recommendations on issues canvassed in the Royal Commission's *Education and Learning Issues Paper*, including restraint, seclusion, bullying and matters relating to inclusive education. It also highlights relevant information about Victoria's Reportable Conduct Scheme and Child Safe Standards.

Recommendations

That the Royal Commission consider:

- *national legislation requiring protection of the human right to education to align with Australia's international obligations under the Convention on the Rights of Persons with Disabilities*
- *that states and territories be required to report on the use of restraint and seclusion in schools and on measures to eliminate these restrictive practices*
- *the development of national guidelines to address bullying of students with disability and provide links to disability-specific resources and training*
- *a national campaign to ensure that schools, parents and students are aware of relevant laws and policies, children's rights regarding enrolment, guidance on how schools assess anticipated adjustments and determine their reasonableness and complaint processes*
- *a national requirement for schools to collect and report de-identified data on the number of students with disability (funded and unfunded) who are attending part-time*
- *that states and territories be required to report on suspensions and expulsions of children with disability, with disaggregation of data on Aboriginal children.*

Introduction

The Commission believes implementation of a human-rights based approach is key to promoting a more inclusive society that supports children with disability to live free from violence, abuse, neglect and exploitation. As part of Australia's international obligations, it has committed to protecting the human right to education including for children with disability, but this has not yet been enshrined in national legislation. The lack of legal

protection of this basic human right means parents of students with disability begin negotiation of their child's education from a position of disempowerment.

Despite state and federal anti-discrimination legislation requiring that children with disability have access to education on the same basis as their peers, many children with disability are subjected to a range of experiences that negatively impact on their participation in education. Practices relating to restraint, seclusion, suspension and expulsion represent the most obvious risks for breaching the rights of students with disability.¹ However, children with disability are also subjected to very high rates of bullying associated with their disability, preventing their access to education in a safe and supportive environment.

A lack of understanding of legal and anti-discrimination obligations, combined with exclusionary funding models, leads to discouragement² or refusal of children with disability from school enrolment,³ and children and families feeling pressured to leave, attend part-time and not participate in special activities.⁴ These practices reduce the educational outcomes of children with disability and lead to their social disablement, as well as preventing their peers from having direct experience with disability, which is fundamental to developing a more inclusive society.⁵

Access to education and schooling has consistently been raised as the pathway to achieving independence and wellbeing by participants involved in consultations to develop the next National Disability Strategy, with 57 per cent of survey respondents reporting it as a severe or major issue for people with disability.⁶ A focus on inclusive schooling was perceived as critically important for children and young people, including a requirement that all schools dedicate resources to ensure adequate accessibility and support for students with disability, and training for teachers. In the consultations, parents raised concerns about the impacts of excluding students from schools early in life, due to their disability or behavioural issues related to their disability, which can set them up to fail later. One participant's comment summed up the issue succinctly as: 'Need to provide the right level of supports in schools, so students are not suspended or expelled due to disability related behaviour'.⁷

Australian census data indicates that Aboriginal children (aged 0-14 years) are more than twice as likely than non-Aboriginal children to live with disability. Aboriginal boys between these ages are almost three times as likely to live with disability as non-Aboriginal boys of the same age.⁸ It is not possible to ascertain to what extent Aboriginal children with disability may be over-represented amongst those subjected to practices such as restraint and seclusion, attendance restrictions and bullying, as this data is unavailable.

The Commission's analysis of the evidence indicates the challenges that confront Victorian children in accessing inclusive education resonate with the experiences of children across Australia. Many of the issues are difficult to quantify given a lack of publicly available data, especially relating to use of restraint and seclusion, and unreasonable delays in rectifying identified issues in data quality, indicating a need for development and implementation of national policy reform.

Convention on the Rights of Persons with Disabilities

Under the *Convention on the Rights of Persons with Disabilities*, Australia has international obligations to take appropriate measures to promote the human rights of people with disability, including rights to education:

- Article 7 – States are required to ‘take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children’
- Article 24 – Ensure ‘an inclusive education system at all levels’ that includes provision of effective, individualised support measures in environments that maximize academic and social development, consistent with the goal of full inclusion.

The Committee on the Rights of Persons with Disabilities has recognised the vital role that education plays in ensuring the fulfilment of other human rights of people with disability, arguing that it is ‘the primary means by which persons with disabilities can lift themselves out of poverty’ and ‘participate fully in their communities’.⁹ Education is the primary means through which whole societies can establish and promote a culture of inclusivity, noting that cultural change can be attained by creating educational environments that afford dignity and respect, value diversity and recognise the capacity of every person to learn and fulfil their potential.¹⁰

The Commission recognises that equitable access to education is essential to enable children with disability to reach their full potential, as well as benefitting their peers and the broader society. Australian and international research studies confirm that children with disability benefit from placement in a mainstream school, both academically and socially, and that these benefits also extend to their peers.¹¹

Education as a right

Despite Australia’s international obligations, there are only two jurisdictions that protect the human right to education, the Australian Capital Territory and, more recently, Queensland with the *Human Rights Act 2019*.

The Victorian *Charter of Human Rights and Responsibilities 2006* does not include a right to education. The *Education and Training Reform Act 2006* (Vic) states that all Victorians should have access to a high-quality education (s 1.2.1), but this provision cannot give rise to a civil cause of action (s 1.2.3). Conversely, parents are legally required to enrol their child in school (or register them for home schooling) and ensure they attend school, or they commit an offence unless they have a reasonable excuse.

The Commission has previously highlighted this inconsistency during the review of the Victorian *Education and Training Reform Regulations 2007* (Vic), reinforcing the role of school attendance as a safety net for children, and the importance ‘that vulnerable children do not “slip through the cracks” and that every child has access to a meaningful education’. The Commission supports the view that a legislated right to education may also assist parents to resolve disputes, as it is positively framed, encouraging dialogue in comparison to focusing on a complaints process.¹²

1. *That the Royal Commission consider national legislation requiring protection of the human right to education to align with Australia’s international obligations under the Convention on the Rights of Persons with Disabilities.*

Concerns about mistreatment of students with disability

While the Commission has seen Victoria’s school system play a positive role in the lives of vulnerable children and young people with disability,¹³ the treatment of some children and young people with disability in Victorian school settings is a matter of significant concern for the Commission. Over recent years, the Commission has been approached by parents and advocates who raise serious concerns about the treatment of some students with disability. Additionally, through our administration of Victoria’s Reportable Conduct Scheme (explained in the Commission’s main submission, **Attachment A**), we have received numerous instances of substantiated reportable conduct against students with disability.

Reportable conduct

The Reportable Conduct Scheme covers the conduct of all staff and volunteers working in registered schools and the Victorian Department of Education and Training (DET). The head of an organisation is required to notify the Commission within three days of becoming aware of a reportable allegation and to then investigate it.

The education sector (mainly schools) represents a large proportion of mandatory notifications to the Commission and substantiated reportable conduct since the Scheme started.¹⁴ While noting this predominance, the Commission acknowledges that workers and volunteers in this sector have very frequent contact with children, and the education sector entered the Scheme with comparatively well-developed processes for reporting child abuse.

From 1 July 2017 to 30 June 2019, six per cent of the allegations of reportable conduct received from the education sector involved a child or young person recorded as having a disability. Of these allegations for children recorded as having a disability, 55 per cent related to physical violence.¹⁵ In most cases, reporting agencies have not identified if the child named in the allegation has a disability, suggesting an under-representation of the proportion of reported allegations relating to children with disability.

There are a number of unique barriers to children with disability being able to report an incident (or when they are feeling unsafe) that do not exist to the same extent for children without a disability. Children with disability may be non-verbal and rely upon access to a communication device to be able to express themselves, which can be challenging when the communication involves more abstract concepts such as alleged abuse. Similarly, children with a cognitive impairment may struggle to find the language to describe their experiences and many on the Autism Spectrum have difficulty describing social behaviours. The degree of vulnerability is most acute in special schools, where the child and their classmates may have communication challenges that affect their ability to report abuse or corroborate another child's allegation.

Despite these challenges, at 30 June 2019, nearly half (47 per cent) of all completed reportable conduct matters involving children with disability in the education sector were substantiated. This is considerably higher than the substantiation rate for the Scheme as a whole over the period (31 per cent).

For matters finalised by 30 June 2019, exactly half of the allegations of physical violence were substantiated. Again, this is considerably higher than the substantiation rate for physical violence allegations across the whole Scheme to 30 June 2019 (35 per cent). The Commission is concerned by the serious nature of the substantiated physical violence matters against children with disability.

This reportable conduct included incidents of staff:

- pulling and pushing children, often whilst yelling at them
- placing a child in a headlock
- slapping a child on the head or wrist
- pulling a child to the ground and forcefully holding them there
- dragging a child along the ground
- kicking a child
- yelling abuse at a child and punching furniture
- pinching a child leaving scratches and bruising
- deliberately throwing a ball to hit a child multiple times.

Reportable conduct that involves sexual misconduct also highlights the extreme power imbalance between children with disability and their teacher as children may require physical assistance from staff.¹⁶ Substantiated sexual misconduct involving children with disability has included touching children in a way that made them feel uncomfortable, entering a change room for students, and making inappropriate comments of a personal and sexual nature and challenging a child when they indicated they would tell their parent.¹⁷

Child Safe Standards

DET and schools are required to comply with Victoria's Child Safe Standards. The Standards complement the Reportable Conduct Scheme by requiring organisations that work with children to have the right systems, processes and culture to prevent abuse and

respond properly to allegations of abuse within the organisation. Registered schools are required to comply with a Ministerial Order that sets out the specific actions they need to take to meet the Standards.¹⁸

In our role overseeing and enforcing compliance with the Standards, the Commission is required to work with the Victorian Registration and Qualification Authority (VRQA) in enforcing the Standards in schools. VRQA is the primary regulator of schools in Victoria and has a specific role enforcing the Ministerial Order. Given this, the Commission generally refers concerns about compliance with the Standards in a registered school to the VRQA for consideration.

These concerns can arise from contacts from parents and advocates. Parents of children with disability have raised concerns with the Commission about issues including schools failing to manage bullying appropriately, and failing to implement or develop effective behavioural supports. In one case, a parent reported that lack of effective supports resulted in their child receiving multiple suspensions.

Concerns relating to the Standards can also arise from the Commission's examination of reportable allegations, demonstrating how the two schemes work together. For example, in one case, the Commission's consideration of reportable allegations of physical violence against a student with disability gave rise to concerns about the school's compliance with the Standards, which were referred to VRQA. These related to:

- the lack of timeliness in reporting the allegation posing a risk to children at the school
- how a school population of children with significant disabilities who are nonverbal are empowered to express their concerns
- the lack of guidance provided to staff on how to address different types of challenging behaviours presented by children with disabilities
- ensuring staff adherence to implementation of the school's Positive Behavioural Support Policy.

Restraint and seclusion

Practices involving restraint and seclusion in schools have received particular attention in Victoria in recent years. The Commission's submission to the 2018 DET review of restraint and seclusion (see below) strongly stated that all efforts should be made towards eliminating these practices.

Research illustrates the use of restraint and seclusion in schools can cause significant harm to children, including physical and psychological injury, loss of dignity, serious harm and even death.¹⁹ The use of restraint and seclusion of students with disability is disproportionate to the rest of the student population and more likely to be used with students with disability such as attention deficit hyperactivity disorder, autism, developmental disorder and emotional disturbance.²⁰

It is widely acknowledged that the management of behaviours of concern through restraint and seclusion risks breaching students' human rights. Researchers have expressed concern that the public discourse on restraint has become framed as a conflict between the rights of teachers and students without disability versus students with disability. The rights of students with disability are perceived by some staff and those in the public discourse, to have taken precedence over the rights of other students to learn in a safe environment and for staff to have a healthy and safe workplace.²¹ All students with or without a disability and staff are entitled to the same rights to bodily integrity and the right to education.²²

There is a need to balance the rights of children and young people with disability against the duty of care to students and staff and workplace health and safety obligations. Jenkin argues that a stronger focus on prevention through positive behaviour support offers the way to fulfil these rights to the mutual benefit of all parties.²³

The Commission's 2018 analysis of child death inquiries involving children with complex medical needs and/or disabilities (see the Commission's main submission, **Attachment A**) found that, in the cases reviewed, schools usually made significant attempts to meet a child or young person's learning needs but were often not equipped to manage challenging behaviours. In some cases, schools successfully worked with psychologists to develop effective behaviour management plans.

VEOHRC's 2012 review of restraint and seclusion in Victoria

The Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) *Held Back* report of 2012 found improvements were needed regarding the use of restraint and seclusion in schools, primarily in relation to:

- a lack of independent monitoring or oversight of the use of restraint and seclusion
- no official data on how frequently these practices occur, why they are used or their impacts
- most educators who had used restraint believing they were inadequately trained to deal with the situation
- differences in regulation of these practices in schools compared to disability services
- use of the practices that would constitute a breach of human rights and the *Equal Opportunity Act 2010* (Vic).

A follow up report by VEOHRC in 2017 found several positive developments:

- the establishment of the role of Principal Practice Leader (Education) (PPL) to build sector knowledge and capability in reducing the use of restraint and seclusion through policy guidance and training
- mandatory reporting of restrictive interventions used by schools, monitored by the PPL
- implementation of recommendations from the Program for Students with Disabilities (PSD) review of 2016 which were expected to result in guidelines for principals and teachers on how to use education support staff effectively and resources for supporting students with autism and high-level communication, social and behavioural challenges.

VEOHRC's 2017 report was generally positive about the newly released policy guidance including reporting requirements to notify parents, the provision of information about supports to address the behavioural aspects of disability as reasonable adjustments and failure to provide these as potentially discriminatory.

VEOHRC expressed concerns about the continued use of seclusion and the status and enforceability of policy guidance, suggesting legislative and further policy reform would be necessary to ensure accountability and compliance, and changes to practice will only be achieved with accompanying adequate investment.²⁴

DET's 2018 review of restraint and seclusion

At the end of 2018, DET undertook a review of principles and policies governing the practices of restraint and seclusion, to which the Commission provided a submission (see **Annexure 1**).

Our submission emphasised the following critical points:

- The use of restraint and seclusion in schools should be regulated by legislation, which should enshrine a commitment to elimination of the practices.
- Independent oversight and monitoring of all incidents of restraint and seclusion is essential, by the PPL or an equivalent role under legislation.
- Progress towards elimination should be monitored through independent oversight, further reviews, which should include the active participation of children and young people with disability, and the collection and annual publishing of data on the use of restraint and seclusion.
- This data should include the characteristics of the children and young people subjected to restraint and seclusion, such as disability, gender and Aboriginality.
- It is critical that schools are educated on how to identify and respond to challenging behaviours that may be a manifestation of disability, exposure to trauma (including intergenerational trauma) or abuse, and how the use of restraint and seclusion impacts children and young people, including vulnerable and Aboriginal children and young people.
- All policies aimed at addressing and eliminating the use of restraint and seclusion must include strategies that are specific to Aboriginal children and young people, reflecting their unique needs and right to culturally appropriate service responses.
- The use of restraint and seclusion in schools may constitute reportable conduct, and policy documents must be clear about schools' obligations under the Reportable Conduct Scheme.
- Use of restraint and seclusion may affect a school's ability to demonstrate compliance with Child Safe Standards, which all Victorian schools are required to comply with. Policy documents must be clear about obligations under the Standards and DET's guidance on the use of restraint and seclusion should be reviewed to ensure compliance

The Commission understands that since the DET review:

- no legislative changes have been made
- there is no independent monitoring of incidents
- DET has not published data about the use of restraint or seclusion
- DET does not currently provide the Commission with data on incidents of restraint and seclusion, including data on the numbers of Aboriginal children and young people subjected to these practices.

Since our submission, the Commission has continued to receive contacts from parents and advocates detailing improper restraint and seclusion of children and young people with disability. The number of approaches of this nature received by the Commission has escalated of late which is particularly concerning.

Current practice in restraint and seclusion

Following every incident of restraint or seclusion in schools, DET requires the incident to be reported to its Security Services Unit and other professionals as required and that parents be notified and provided with an information sheet. There is an expectation that, following each instance of restraint or seclusion, schools will develop plans to prevent future incidents using preventative and de-escalation strategies.

The Commission welcomes the focus on preventative measures and positive behaviour support, in recognition of the close link between the appropriateness of adjustments for learning and the impact on the child's behaviour over time. The lack of publicly available data, however, makes it difficult to assess the impact of these policy and procedural reforms and assess progress towards the aim of elimination of restraint and seclusion practices.

This is a critical issue given the findings of the 2019 survey of almost 500 parents and carers conducted by Children Youth and Disability Australia (CYDA), which explored the continued extent of the restrictive practices of restraint and seclusion.²⁵ Almost one third of students with disability reported having experienced restraint or seclusion in the past year, with 11 per cent of students experiencing both restraint and seclusion. Twenty-one per cent of students with disability reported being restrained, with over half reporting physical restraint and 17 per cent reporting being psychosocially restrained (use of intimidation or threats to control a person).

2. *That the Royal Commission consider that states and territories be required to report on the use of restraint and seclusion in schools and on measures to eliminate these restrictive practices.*

Bullying

Bullying is a pervasive issue for children and young people with disability whose impairment may lead to them being targeted for abuse. Living with disability may also make it more difficult for a child or young person to respond effectively, including understanding how to

make a complaint and to seek support, assuming there are avenues available. Students and parents often report a strong correlation between incidents of bullying resulting in the student with disability being excluded, suspended or even expelled.²⁶

The CYDA 2019 survey found that 48 per cent of students with disability had experienced bullying at school in the past year, with the majority being bullied by other students (46 per cent). The bullying described was predominantly verbal abuse (29 per cent), followed by physical abuse (12 per cent). Concerningly, nine per cent of bullying of students with disability was reportedly by teachers, the school principal and other school staff.

In our own work, through reports of potential non-compliance with Child Safe Standards, the Commission has received concerns from parents of children with disability who have been bullied at school. In one case, the parent reported that their child with Autism Spectrum Disorder does not recognise when she is being bullied. In other cases, a child with ADHD was easily provoked by other students and a child sustained physical injuries as a result of escalating bullying. The parents of these children wanted the schools to implement actions to prevent the bullying behaviour, fearing ongoing negative consequences for their children. (Where appropriate, the Commission referred the cases to VRQA.)

In 2017, DET has indicated to VEOHRC that the existing *Bully Stoppers* program, policy materials and training modules for teachers will assist to address bullying of students with disability. However, this is a general anti-bullying program rather than a specialised program with disability-specific resources. VEOHRC has proposed that the department could address this deficiency through including more disability-specific bullying information in the School Policy and Advisory Guide, including information on the obligation to prevent harassment and victimisation under the Education Standards.²⁷

3. *That the Royal Commission consider the development of national guidelines to address bullying of students with disability and provide links to disability-specific resources and training*

School enrolment

The Commission remains concerned that enrolment in school can present great difficulties for parents of children with disability who experience 'gatekeeping' when the school either refuses to enrol a child with disability or suggests the child would receive better or more support at a different school.²⁸ This practice was originally highlighted in VEOHRC's *Held back* report which found 20 per cent of parents reported problems with enrolment.²⁹ Recent data indicates that this practice persists, with the CYDA 2019 survey finding that 12 per cent of students with disability reporting that they had been refused enrolment.³⁰

In Victoria, if a school refuses an enrolment, it may constitute discrimination under the *Equal Opportunity Act 2010* (Vic), unless the student needs adjustments which are unreasonable. The Commonwealth Disability Standards for Education 2005 require schools to consult with

a prospective student, or their parents or carers, to determine whether a reasonable adjustment can be made.³¹ Recent Victorian research found this did not occur in many cases, and that enrolment was often informally discouraged at an early stage.³²

The Commission is concerned that schools may be making decisions about enrolments without accessing, or considering, comprehensive information about students' needs. The lack of data on this practice of discouraging or refusing enrolment prohibits a full understanding of the scope of this problem.

4. That the Royal Commission consider a national campaign to ensure that schools, parents and students are aware of relevant laws and policies, children's rights regarding enrolment, guidance on how schools assess anticipated adjustments and determine their reasonableness and complaint processes.

Pressure to leave school

The Commission is concerned that based on available research, some students who have enrolled in school experience informal or formal pressure to leave school, with little opportunity to participate in this major decision. This is not an isolated issue, with research revealing 15 per cent of parents have reported pressure for their children with disability to leave a school after enrolment. This pressure ranges from being made to feel unwelcome, suggesting there was a better placement option or being advised the present school was no longer an option.³³

These practices indicate a lack of transparency and accountability about the process by which schools assess the reasonableness of adjustments necessary for students and a failure to empower children and their families to participate in decision-making, risking non-compliance with the *Equal Opportunity Act 2010* (Vic) and the Commonwealth Disability Standards for Education 2005.

Part-time attendance

The *Held Back* report highlighted the issue that at that time nine per cent of parents reported their children with disabilities were attending school part-time, despite a legal requirement that all enrolled students under the age of 17 years attend school full time.³⁴

Despite collaborative work between VEOHRC and DET to address this practice,³⁵ recommendations to collect and publicly report data on attendance remain unaddressed.³⁶ National survey data suggests part-time attendance of students with disabilities remains a serious issue, with a 2019 survey indicating almost 17 per cent of students were not attending school full time.³⁷

It is essential that information about the proportion of children with disabilities not able to attend school full-time is publicly available to evaluate the scale of the problem and develop strategies to address it.

5. *That the Royal Commission consider a national requirement for schools to collect and report de-identified data on the number of students with disability (funded and unfunded) who are attending part-time.*

Suspensions and expulsions

The CYDA 2019 survey indicates that almost 15 per cent of students with disability were suspended in the previous year, with 31 per cent of these students having been suspended multiple times.

The Commission's 2016 systemic inquiry into services provided to Aboriginal children in out-of-home care in Victoria found a 'disturbingly high' rate of suspensions and expulsions amongst Aboriginal children, including 10 children suspended from special developmental schools.³⁸ The most recent DET data available indicates that 2.1 per cent of children in government schools in 2017 were Aboriginal, however they comprised six per cent of all expulsions for that year. Data on the number of students with disability who were suspended or expelled is not published.³⁹

The availability of this data has been an ongoing issue in Victoria. In 2012, VEOHRC recommended that DET collect and annually publish aggregate data on the number of suspensions and expulsions of students with disability. However, the department did not address this recommendation in its formal response to the investigation and declined later requests in 2017 by VEOHRC to publish attendance data.⁴⁰

DET's reasons for not publishing this data were:

- possible misattribution of exemption or withdrawal due to the child's disability status when it may reflect parent choice
- the limited data set that currently exists
- the implications of the Nationally Consistent Collection of Data
- requirements of the *Health Records Act 2001 (Vic)* and the *Privacy and Data Protection Act 2014 (Vic)* to not report at the school level because it may identify the individual student.⁴¹

An inquiry by the Victorian Ombudsman in 2017 into expulsions of students at government schools found students with disabilities or a mental illness were expelled at a rate of 31 per cent, despite only 15 per cent of students being classified as having a disability. Only four per cent of students with disability received PSD funding, but of the students expelled, 16 per cent were receiving PSD funding, indicating an expulsion rate four times that which

would be expected. The Ombudsman noted that these figures were likely to still be an under-representation, given the quality of the data available.

The Ombudsman's report again recommended that data be collected and reported publicly on expulsions of students with disability or mental illness who receive supplementary funding. DET accepted the recommendation and reported that its expulsion and record keeping processes had been redesigned and that school expulsion data would be published on its website annually.⁴² To date, DET's website only contains expulsion data for 2017, and does not include disability indicators.⁴³

The Commission is concerned at the failure to collect and publish data about suspensions and expulsions involving children with disability, despite recommendations from both VEOHRC and the Victorian Ombudsman. Suspension and expulsion are often traumatic events for the student, their family and others and could lead to a child's complete disengagement from education. It is imperative that preventative strategies are applied consistently, that decision-making is transparent and accountable, and review processes focussing on continuous improvement are enacted.

6. *That the Royal Commission consider that states and territories be required to report on suspensions and expulsions of children with disability, with disaggregation of data on Aboriginal children.*

- ¹ Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2012). *Held back: The experiences of students with disabilities in Victorian schools*. VEOHRC, Carlton; Ombudsman Victoria (2017). *Investigation into Victorian government school expulsions*, August 2017. OV, Melbourne.
- ² Jenkin, E., Spivakovsky, C., Joseph, S. and Smith, M. (2018). *Improving educational outcomes for children with disability in Victoria*. Castan Centre for Human Rights Law, Monash University, Clayton.
- ³ Children and Young People with Disability Australia (CYDA) (2019). *Time for change: The state of play for inclusion of students with disability, Results from the 2019 CYDA National Education Survey*. CYDA, Collingwood.
- ⁴ Walsh, T. and Burton, B. (2019). Queensland's new right to education: What does it mean for children with disabilities? *Alternative Law Journal*, October 2019 <http://doi.org/10.1177/1037969X19883967>.
- ⁵ Jenkin et al, 2018.
- ⁶ Department of Social Services (DSS) (2019). *Right to Opportunity: Consultation report to shape the next National Disability Strategy*, Australian Government, Canberra, p.37-38.
- ⁷ Department of Social Services (DSS) (2019). *Right to Opportunity: Consultation report to shape the next National Disability Strategy*, Australian Government, Canberra, p.37-38.
- ⁸ Australian Bureau of Statistics (ABS) (2012). 4433.0.55.005 – Aboriginal and Torres Strait Islander People with a Disability released 18 April 2017.
- ⁹ Walsh and Burton, 2019.
- ¹⁰ Walsh and Burton, 2019.
- ¹¹ Cologon, K. (2013). *Inclusion in education: Towards equality for students with disability*, Issues paper. Children and Families Research Centre, Macquarie University; and Hehir, T., Grindal, T., Freeman., B., Lamoreau, R., Borquaye, Y. and Burke, S. (2016). *A summary of the evidence on inclusive education*. Harvard Graduate School, Massachusetts.
- ¹² Jenkin et al, 2018.
- ¹³ In particular, in the Commission's child death inquiries, discussed in **Attachment A**. The Commission's 2018 analysis of child death inquiries involving children and young people with disability (discussed in Attachment A) found that schools usually provided a level of safety and emotional support and were instrumental in identifying a child or young person's needs and making appropriate referrals to supports. However, the inquiry found that often schools were not equipped to manage challenging behaviours.

- 14 For details see pages 81-85 and 94-96 of the Commission's 2018-19 Annual Report.
- 15 Physical violence includes physical violence committed against a child, with a child or in the presence of a child.
- 16 Sexual misconduct includes sexual misconduct committed against a child, with a child or in the presence of a child.
- 17 From 1 July 2017 to 30 June 2019, two out of three allegations of sexual misconduct were substantiated.
- 18 Ministerial Direction 870:
<https://www.vrqa.vic.gov.au/childsafes/Pages/documents/Min%20Order%20870%20Child%20Safe%20Standards.pdf>.
- 19 Suarez, L. (2017). Restraints, seclusion and the disabled student: The blurred lines between safety and physical punishment, *University of Miami Law Review*, 71, 859 – 894.
- 20 Suarez, L. (2017). Restraints, seclusion and the disabled student: The blurred lines between safety and physical punishment, *University of Miami Law Review*, 71, 859 – 894.
- 21 Jenkin et al (2018). p.78.
- 22 Jenkin et al (2018). p.79.
- 23 Ibid.
- 24 Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2017). *Held back: The experiences of students with disabilities in Victorian schools – Analysis paper*. VEOHRC, Carlton.
- 25 CYDA, 2019.
- 26 VEOHRC, 2012; CYDA, 2019.
- 27 VEOHRC, 2017.
- 28 Walsh and Burton, 2019.
- 29 VEOHRC, 2012.
- 30 CYDA, 2019.
- 31 Disability Standards for Education 2005, Part 4.
- 32 Jenkin et al, 2018.
- 33 Jenkin et al, 2018.
- 34 VEOHRC, 2012.
- 35 Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2015). *Held back Implementation Update – August 2015*. VEOHRC, Carlton.
- 36 VEOHRC, 2017.
- 37 CYDA, 2019.
- 38 Commission for Children and Young People (CCYP) (2016). *Always was, always will be Koori children': Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*. CCYP, Melbourne.
- 39 At <https://www.education.vic.gov.au/about/department/Pages/factsandfigures.aspx> accessed 18 February 2020.
- 40 VEOHRC, 2017.
- 41 VEOHRC, 2017.
- 42 At <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/ombudsmans-recommendations-second-report/#full-report>, page 51
- 43 At <https://www.education.vic.gov.au/about/department/Pages/factsandfigures.aspx> accessed 18 February 2020