Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Education of children and young people with disability

Submission No 1.

Children and Young People with Disability Australia

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Children and Young People with Disability Australia

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Acknowledgements:

Children and Young People with Disability Australia would like to acknowledge the traditional custodians of the lands on which this report has been written, reviewed and produced, whose cultures and customs have nurtured and continue to nurture this land since the Dreamtime. We pay our respects to their Elders past, present and future. This is, was and always will be Aboriginal land.

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Executive summary

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0–25 years. CYDA has an extensive national membership of more than 5000 young people with disability, families and caregivers of children with disability, and advocacy and community organisations.

CYDA's purpose is to systemically advocate at the national level for the rights and interests of all children and young people with disability living in Australia.

We are pleased to provide our first submission to the Royal Commission into Abuse, Violence, Neglect and Exploitation of People with Disability on the topic of school education. This is the first of many submissions we plan to make over the course of the Royal Commission on the topic of education and we will be making submissions on the other areas of inquiry such as employment, housing, child project and justice.

CYDA's first submission to the Disability Royal Commission on school education covers:

- The evidence base for inclusive education from a review of 60 years of evidence about the benefits of inclusive education for students
- The results from our 2019 National Education Survey of 505 families/caregivers of students with disability and young people with disability
- The results of our Freedom of Information requests from state and territory government education jurisdictions on incidents of a child protection nature and restrictive practices
- Four detailed case studies of the educational experiences for students with disability.

The Disability Royal Commission must make the United Nations Convention on the Rights of Persons with Disability (CPRD) as its starting point for its investigation to the experiences of people with disability and the changes that need to be made to ensure they are free from violence, abuse, neglect and exploitation. In relation to education this includes General comment No. 4 (2016) Article 24: Right to inclusive education where the Committee provided detailed definitions and guidance on what is and isn't inclusive education. These definitions must be a starting point for the Commission and the right to inclusive education must not be contested, despite the vested interests many stakeholders have in the continuation of segregating students with disability into special schools and separate environments from their peers without disability. The UN Convention into the Rights of the Child also needs to be a lens through which the Royal Commission considers children and young people with disability. Additionally the evidence base for inclusive education must not be contested. Our report *Towards inclusive education: A necessary process of transformation* provides definitive evidence from Australia and internationally about the benefits of inclusive education from a rights perspective as well as the outcomes for children and young people with disability, other students without disability, schools and the general community. An inclusive society for people with disability must include inclusive education.

The key findings from our 2019 National Education Survey, which is consistent with our previous three other surveys, show that students with disability are routinely excluded in their education, with many being segregated from 'mainstream' schools and classrooms, not attending school full-time, refused enrolment and excluded from school activities. Suspensions and expulsions are also familiar practices, showing the lack of understanding and support for students with disability.

While the majority of students receive some specific support at school because of their disability or learning difference, there are many families who are out-of-pocket for supports and equipment to enable the student to participate in education. Many students do not have a personalised individual education plan in place.

Families did **not** believe:

- students with disability received adequate support in their education
- that they were communicated with regularly about the student's learning progress
- that teachers had high expectations of the student, or
- that teachers had the required training to provide a supportive and enriching education environment.

Students with disability experience unacceptably high levels of abuse and violence at school, including bullying and restrictive practices such as restraint, seclusion or both of these.

Following consultation with our members and research CDYA will be providing education submissions to the Disability Royal Commission in relation to:

- school funding for inclusive education
- early childhood education
- post-school transition/education
- the interface between education and other systems such as health, National Disability Insurance Scheme (NDIS), child protection and out-of-home care.

Recommendations and considerations for the Disability Royal Commission

Recommendations to ensure inclusive education

- Develop and implement a National Action Plan for Inclusive Education to ensure a successful transition from parallel systems of education to one inclusive system of education
- While this transition is occurring ensure that no new segregated settings (schools, pre-schools, centres, units or classrooms) are created in educational jurisdictions
- Ensure the full recognition of human rights through:
    - conducting a robust review, in consultation with organisations of persons with disability, of the Disability Standards for Education 2005 and implement the recommendations in the new standards.
    - expanding the current data collection practices to include recording and transparent reporting of the numbers of students who do not qualify for an adjustment, who are prevented from enrolling in their local education settings, and of all use of restrictive practices, suspension and expulsion.
    - transparent and disaggregated reporting of educational attainment and completion rates
- Foster a culture of inclusion to address ableism within and beyond education settings and systems through policy, practice and education
- Introduce compulsory, comprehensive and ongoing teacher education for inclusion in pre-service and in-service professional development for educators (not to be confused with 'special' education) including developing awareness regarding ableism and the provisions of the CRPD. This includes at least one compulsory core (semester-long) subject in every pre-service teacher education program that is solely dedicated to inclusive education
- Build the foundations for successful collaboration for inclusion by:
    - ensuring inclusive education practice is an integral part of education for all allied health and education leaders and other education support professionals.
    - developing evidence-based policy and standards regarding the use of paraprofessional support and teachers' aides
    - providing information to families about how to advocate for inclusive education
- Ensure flexible and responsive curriculum and assessment approaches
- Listen to students with ongoing commitment to direct, accountable and regular consultation with students who experience disability and their families across all aspects of policy-making and implementation for inclusive education
- Prioritise disability equity education through further development of the diversity approach within the Australian Curriculum and the Early Years Learning Framework for Australia, including awareness-raising regarding ableism and educational practice
- The new National Disability Strategy has a strong focus on inclusive education with appropriate targets and monitoring of progress

Recommendations to preventing violence and abuse against students with disability

- A national framework is developed and implemented by all educational authorities to eliminate the use of the restrictive practices in schools and ensure educators and educational systems are held to account when restrictive practices occur
- Each state and territory educational authority develop and implement whole school anti-bullying policies, practice and reporting to prevent bullying of students with disability
- Review the legislative protections, the National Principles for Child Safety developed following the Royal Commission into Institutional Responses to Child Sexual Abuse, and state and territory based reportable conduct schemes to ensure they adequately cover violence, abuse, neglect and exploitation of students with disability.

Recommendations to increase transparency, accountability and complaints methods

- Ensure there are clear and consistent legislation, independent oversight bodies and processes to ensure families of students with disability can complain and have their concerns heard and investigated when violence, abuse, neglect and exploitation occurs in education without fear of reprisal
- That independent oversight bodies for education have consistent powers and resourcing to conduct systemic inquiries and education about violence, abuse, neglect and exploitation for students with disability
- The Australian Government reports regularly progress of students with disability in line with its CPRD obligations.

Further considerations for the Disability Royal Commission

- In light of CYDA's unsuccessful attempt under Freedom of Information laws to receive data about violence and abuse against students with disability, compel the states and territories to provide these data to the Royal Commission so an analysis of the prevalence and systemic issues can be completed by the commission
- The Royal Commission ensure they schedule a sufficient number of hearings (private and public) to enable families of students with disability and young people with disability to tell their story and be heard and believed
- Identify children and young people with disability as a priority group for engagement in the Royal Commission across all topic areas under investigation
- As a matter of priority publish the Royal Commission Accessibility Strategy and ensure there is a strong communications strategy to assist people to engage with the Royal Commission.

Introduction

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0 to 25 years. CYDA has an extensive national membership of more than 5000 young people with disability, families and caregivers of children with disability, and advocacy and community organisations.

CYDA's purpose is to systemically advocate at the national level for the rights and interests of all children and young people with disability living in Australia, and it undertakes the following to achieve this:

- listening and responding to the voices and experiences of children and young people with disability
- advocating for children and young people with disability for equal opportunities, participation and inclusion in the Australian community
- educating national public policy-makers and the broader community about the experiences of children and young people with disability
- informing children and young people with disability, their families and caregivers about their citizenship rights and entitlements
- celebrating the successes and achievements of children and young people with disability.

Research evidence overwhelmingly supports inclusive education. As well as positive outcomes for social justice and a sense of community and belonging, there are benefits for learning outcomes and for the social, behavioural and physical development of children and young people who do and do not experience disability.

Inclusive education is about everyone learning, growing and flourishing – **together** – in all our diversity. Inclusive education recognises **the right of every child and young person** – without exception – to be included in general education settings. It involves adapting the environment and teaching approaches to ensure genuine and valued full participation of all children and young people. It embraces human diversity and welcomes all as **equal** members of an educational community.[1]

This submission is informed by deep consultation with CYDA members over many years and research and policy development including annual education surveys, government submissions, and our second review of the evidence released in October 2019 by Dr Kathy Cologon, *Towards inclusive education: A necessary process of transformation* included in this submission, building on our previous review of the evidence[2].

The data included in this submission is from CYDAs National Education Survey conducted between August and September 2019 to provide important information on the experience of children and

[1] Children and Young People with Disability Australia (2019) Fact Sheet 1, 'What is inclusive education?'
[2] Cologon, K. (2019) Towards inclusive education: A necessary process of transformation. Report written by Dr Kathy Cologon, Macquarie University, for Children and Young People with Disability Australia (CYDA) and Cologon, K. (2013) Inclusion in education: towards equality for students with disability. Report written by Dr Kathy Cologon, Macquarie University, for Children and Young People with Disability Australia (CYDA)

young people with disability in their school education[3]. There were 505 young people with disability and families and caregivers of children with disability who responded to the survey.

The survey had representation from all states and territories, all age groups and from metropolitan, regional, rural and remote Australia. The majority of respondents were from families of students with disability (97%), with the balance of respondents being students with disability.

The key findings from our survey, which is consistent with our previous three other surveys, are that students with disability are routinely excluded in their education, with many being segregated from 'mainstream' schools and classrooms, not attending school full-time, refused enrolment and excluded from school activities. Suspensions and expulsions are also familiar practices, showing the lack of understanding and support for students with disability.

While the majority of students receive some specific support at school because of their disability or learning difference, there are many families who are out-of-pocket for supports and equipment to enable the student to participate in education. Many students do not have a personalised individual education plan in place.

Families did **not** believe:

- students with disability received adequate support in their education
- that they were communicated with regularly about the student's learning progress
- that teachers had high expectations of the student, or
- that teachers had the required training to provide a supportive and enriching education environment.

Students with disability experience unacceptably high levels of abuse and violence at school, including bullying and restrictive practices such as restraint, seclusion or both of these.

CYDA's first submission to the Disability Royal Commission on school education covers:

- The evidence base for inclusive education from a review of 60 years of evidence about the benefits of inclusive education for students
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- Four detailed case studies of the educational experiences for students with disability.

Following consultation with our members and research CDYA will be providing education submissions to the Disability Royal Commission in relation to:

- school funding for inclusive education
- early childhood education
- post-school transition/education
- the interface between education and other systems such as health, NDIS, child protection and out-of-home care.

[3] Children and Young People with Disability (2019) Time for change: The state of play for inclusion of students with disability

The evidence for inclusive education

Research evidence overwhelmingly supports inclusive education. As well as positive outcomes for social justice and a sense of community and belonging, there are benefits for learning outcomes and for the social, behavioural and physical development of children and young people who do and do not experience disability.

Inclusive education is about everyone learning, growing and flourishing – **together** – in all our diversity. Inclusive education recognises **the right of every child and young person** – without exception – to be included in general education settings. It involves adapting the environment and teaching approaches to ensure genuine and valued full participation of all children and young people. It embraces human diversity and welcomes all as **equal** members of an educational community.[4]

The evidence base for inclusive education cannot be contested. CYDA commissioned Dr Kathy Cologon from Macquarie University to conduct an extensive review of the evidence on inclusive education. The resultant report, *Towards inclusive education: A necessary process of transformation* **(Appendix A)** reviewed evidence across six decades and incorporated more than 400 research papers, relevant treaties and reports, to further explore the existing barriers and the possibilities for addressing these to bring about the realisation of inclusive education.

The evidence report has been augmented by a series of fact sheets designed to help parents, educators and educational policy makers to understand the evidence base. The fact sheets at **(Appendix B-E)** are:

- What is inclusive education?
- The benefits of inclusive education
- Addressing ableism in education
- Transformation to inclusive education: the next steps

The key findings of the *Towards inclusive education: A necessary process of transformation* report were:

- There is no evidence base to support segregated education in any form, including in special schools, special units or special classrooms, and that this is a breach of Australia's international human rights obligations under the UN Convention on the Rights of Persons with Disability (CPRD)
- There is no child or young person too complex or 'disabled' to be included in general 'mainstream' education settings
- The research shows benefits for students who experience disability for inclusion in 'mainstream' education including:
    - better academic and vocational outcomes than their peers in non-inclusive settings
    - greater social interaction, resulting in more opportunities to establish and maintain friendships
    - increased independent communication and speech and language development, in turn supporting greater inclusion and active participation

[4] Children and Young People with Disability Australia (2019) Fact Sheet 1, 'What is inclusive education?'

    - a sense of belonging and a self-concept of not just being a receiver of help but also a giver of help
    - access to a broader range of play and learning activities, which can stimulate physical development and enhance children's experiences.
- Inclusive education benefits students without disability, teachers and educators and the community.

Neglect of students with disability

Macro-exclusion

"In its most extreme form, macro-exclusion in education involves denial of any formal education opportunities.

While this form of macro-exclusion is ongoing, macro-exclusion more commonly occurs when a student is excluded from 'mainstream' education and segregated into a 'special' school or 'special' class/unit for all or part of the day, the week or the year.

Macro-exclusion is a clear form of segregation that is straightforward to identify. However, the frequent misunderstandings of the term 'inclusive education' lead to a situation where exclusion is often called, or misappropriated as, 'inclusion'. Many genuine efforts towards inclusive education have been and continue to be made, in response to the national and international attention to the importance of inclusive education over the past decades. In many instances, however, the terms 'special education' or 'special needs education' have been replaced with the term 'inclusive education', without any actual change in policy or practice."[5]

The CRPD definition of inclusion in education explains that no form of segregation or integration constitutes inclusive education.[6] In our report, *Time for change: The state of play for inclusion of students with disability* **(Appendix F)** we found that there was widespread macro-exclusion in schools. Based on the 2019 National Education Survey results (Table 1), we found, that one in four students is in a special school or has a dual enrolment between a 'mainstream' and special school[7]. Meanwhile, one in ten is enrolled in a 'mainstream' school but is separated from the class in a separate unit. There is also evidence of 'gate-keeping' and students being denied enrolment, with one in ten students with disability having been refused enrolment. There are significant numbers of students who are not participating in full-time schooling, with families reporting that schools are using suspensions and 'support needs' as ways to prevent students from attending school full-time.

Our report at **Appendix F** has case studies and detailed results about macro-exclusion of students with disability.

[5] Cologon, K. (2019) Towards inclusive education: A necessary process of transformation. Report written by Dr Kathy Cologon, Macquarie University, for Children and Young People with Disability Australia (CYDA), p. 27

[6] United Nations Convention on the Rights of Persons with Disabilities, General comment No. 4 (2016) Article 24: Right to inclusive education

[7] Children and Young People with Disability (2019) Time for change: The state of play for inclusion of students with disability

Table 1. Educational segregation and exclusion*

	AUS	VIC	NSW	WA	QLD
No of students with disability	505	141	119	85	82
% were enrolled in segregated education in either dual enrolment with a special school or attending a special school	24.2	32.6	22.7	28.2	13.4
% who attended a 'mainstream' school were separated from their peers either on a full-time basis in a special unit, or withdrawn to the special unit for instruction in combination with attending a regular class	15.5	8.5	18.5	22.4	15.9
% who have been refused enrolment	12.5	9.2	10.9	5.9	25.6
% who did not attend school full time	16.6	22.0	12.6	10.6	11.0
% who were suspended in the last year	14.7	12.8	13.5	16.5	15.9
% who were expelled in the last year	1.8	1.4	1.7	3.5	1.2

*While data were collected from ACT, TAS, SA, NT there were insufficient numbers to do jurisdictional comparisons

Micro-exclusion

"When exclusion occurs within 'mainstream' settings that claim to be inclusive, this results in 'micro-exclusion'. One common form of micro-exclusion is where a student is present within a 'mainstream' setting, but is separated from the group and the curriculum, often through the provision of 'inclusion support' that (usually unintentionally) isolates the student educationally, socially and even physically. … Micro-exclusion can occur when people misunderstand inclusion as a continuation of 'special' education but in a 'mainstream' context….. Micro-exclusion forms one of the biggest barriers to inclusive education. . . Micro-exclusion also occurs when someone is not fully included as a valued member of the classroom community (often as a consequence of other forms of micro-exclusion)… micro-exclusion commonly occurs when integration is misunderstood as inclusion"[8]

Our report also highlighted the insidious micro-exclusion that occurs for students with disability, where students are not valued members of the school community or included along with their peers (Table 2). We found strong evidence that students are routinely being denied opportunities to fully participate in the curriculum and school life, with almost half of students being excluded from participating in camps, sports, excursions, events and school activities.[9] The survey results showed one in ten students with disability has been suspended and many on multiple occasions.

Families reported they were not included in the development of personalised learning plans for their child and that they and the student are not made to feel welcome at school. One in three said that teachers and support staff do not have high expectations of the student and their learning.

Despite many students receiving additional support at school and additional funding, half of the survey respondents believed the student didn't receive adequate support in their education and that teachers and support staff do not have the training required to provide a supportive and enriching education environment. Families are also using their child's NDIS supports and are paying personally to ensure the participation and access of the child or young person with disability.

[8] Cologon (2019), p.27
[9] Children and Young People with Disability (2019)

The micro-exclusion described above is equally concerning as the macro-exclusion, where "…segregation on the basis of 'disability' is, arguably, the last remaining 'respectable' form of segregation in schooling."[10]

Micro-exclusion, which the survey results highlight, reflects a deep systemic and cultural problem that needs to be urgently addressed in Australia's educational system. These problematic attitudes, behaviours and ableism are not going to be solved without whole-of-system educational reform and investment in inclusive education.

The following table shows some of the alarming statistics from our education survey results on the micro-exclusion in schools. Our report at **Appendix F** has detailed results and case studies about the experiences of micro-exclusion experienced by students with disability.

Table 2. School cultures for inclusion*

	AUS	VIC	NSW	WA	QLD
% who were excluded from events or activities at school in the last year	40.2	40.4	42.0	42.4	32.9
% who did not have an Individual Education Plan (IEP) in place	17.8	22.7	10.9	22.4	18.3
% of families who didn't know if an IEP was in place	9.1	12.1	10.9	3.5	8.5
% of families who were not involved in the development of the IEP	36.4	44.0	29.4	37.7	39.0
% of families who were out-of-pocket for a range of supports or equipment and have paid personally to enable a student with disability to access and participate in education	57.2	54.6	58.0	54.1	63.4
% who disagreed that teachers and support staff had the training required to provide a supportive and enriching education environment for students with disability	52.1	52.5	56.3	50.6	48.8
% who disagreed that the student receives adequate support in their education	48.9	45.4	53.8	52.9	41.5
% who disagreed that there was regular communication with the family/caregivers about the student's learning progress	34.7	29.8	38.7	36.5	35.4
% who disagreed that teachers and support staff had high expectations of the student and their learning	29.7	34.0	33.6	23.5	23.2
% who disagreed that family/caregivers of the student were made to feel welcome at school	23.4	23.4	27.0	23.5	20.7
% who disagreed that the student was made to feel welcome at the school	18.2	15.6	19.3	21.2	15.9

*While data were collected from ACT, TAS, SA, NT there were insufficient numbers to do jurisdictional comparisons

[10] Cologon (2019), p. 18

Violence and abuse against students with disability

Bullying and restrictive practices

Our report shows that violence against and abuse of students with disability is widespread (Table 3). Almost half of students with disability have been bullied by either their peers or by teachers and school staff, and one in three students with disability has been subject to the restrictive practices of restraint and seclusion. “Research has demonstrated that, in practice, restraint and seclusion are used in school settings for a variety of purposes beyond or in addition to a protective purpose, including as a means of coercion, discipline, convenience or retaliation.”[11]

Our report at **Appendix F** has detailed results and case studies about the experiences of abuse and neglect of students with disability.

Table 3. Abuse and neglect*

	AUS	VIC	NSW	WA	QLD
% who experienced bullying at school in the last year	47.9	48.2	44.5	55.3	46.3
% who experienced restraint or seclusion in the last year	30.9	29.1	29.4	37.7	31.7
% who experienced both restraint and seclusion in the last year	11.1	9.9	10.1	15.3	9.8
% who experienced restraint in the last year and the most common form was physical restraint, followed by psycho-social, mechanical and chemical restraint	21.0	18.4	16.8	24.7	25.6
% who experienced seclusion in the last year and the settings for seclusion included solitary confinement with and without supervision in a room, classroom or staff office	21.0	20.6	22.7	28.2	15.9

*While data were collected from ACT, TAS, SA, NT there were insufficient numbers to do jurisdictional comparisons

In the Australian Civil Society Shadow Report to the UN Committee on the Rights of Persons with Disability we highlighted under *Article 15, Freedom from torture and cruel, inhuman or degrading treatment or punishment* that Australia has no regulatory protective framework to protect children with disability from being subjected to behaviour modification and restrictive practices in schools. We called for “a nationally consistent legislative and administrative framework for the protection of people with disability from behaviour modification and the elimination of restrictive practices across a broad range of settings”[12].

Existing national guidelines and frameworks do not directly address the use of restraint and seclusion in schools, and state and territories have differing regulations, most allowing physical restraint and some including seclusion. What is common is a complete lack of policy frameworks that sit around eliminating restraint and seclusion.[13] One of the ongoing challenges is that there is no consistent data routinely collected in Australian schools on the rates of restrictive practices including restraint and seclusion.

[11] McCarthy, T (2018), Regulating restraint and seclusion in Australian Government Schools, A Comparative Human Rights Analysis, QUT Law Review Volume 18, General Issue 2 pp. 194–228ISSN: Online–2201-7275, p. 200, citing a range of research
[12] *Disability Rights Now*, 2019 Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019, p.23
[13] McCarthy, T (2018)

CYDA Freedom of Information (FOI) request to education jurisdictions on abuse and neglect

In February 2019 CYDA wrote to every state and territory education department with an FOI request for information regarding

a) any complaints, investigations and outcomes regarding incidents of a child protection nature against employees where the alleged victim has been identified as a child or young person with disability.
b) information of any incidents of restraint and seclusion of students with disability during the timeframe stipulated.

CYDA sought de-identified information regarding any complaints or incidents which occurred from 1 January 2017 to 8 March 2019. Complaints or incidents of a child protection nature would include those involving allegations of violence, abuse, neglect or exploitation (including restrictive practices). It was requested that the information include the date the allegation was received, employee type, initial allegation, outcome and action(s) taken as a consequence of the allegation.

There were significant difficulties in obtaining the data, with sometimes multiple requests made from February 2019 to October 2019. This resulted in CYDA needing to change the scope of the requests to match the data that is collected by the state and territories, or in some instances the FOI request was refused. The following table shows responses that have been received to date. All data of complaints or incidents of a child protection nature or incident provided to CYDA is at **Appendix G**.

Table 4. Violence and abuse FOI request status

State/ Territory	Response Received	Outcome
ACT	The Education Directorate provided partial access to 1 document which related to point a) of our request. It was provided with deletions applied because it contained information considered to be contrary to the public interest to disclose, or would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.	The Directorate provided a one page document containing 6 incidents
NSW	The Department of Education requested our application be amended to "A de-identified Employee Conduct and Performance (EPAC) directorate report containing a summary of the allegation and the investigation outcomes of incidents of a child protection nature against employees where the alleged victim has been identified as a student in an NSW government school with a disability. Please include incidents of restraint and seclusion of students with a disability."	The Department provided a 17 page document with 263 allegations of employee misconduct and the outcomes.
NT	The Education Department did not provide the information requested on the basis that "…I am of the view that the time required to process your application is substantial and would be an unreasonable interference with the work of the Department." An offer to amend our request was made, asking CYDA to identify 10 schools where the information could be collected. An amended request made 15 August 2019, data have yet to be provided.	Data yet to be provided

State/ Territory	Response Received	Outcome
QLD	The Department of Education and Training provided a copy allegations of employee misconduct.	The Department provided a spreadsheet containing 39 allegations of employee misconduct and the outcomes.
SA	The Department of Education stated that "the Department does not hold a document that addresses the scope of your request, nor could information/data be readily extracted into a single document." The Department was able to offer information from the Incident and Response Management System (IRMS) and asked for confirmation to amend scope of our application. CYDA did not respond in time for completion of the FOI request. A new application was made on 15 August 2019. Subsequently, four documents located relating to one incident. Department determined to refuse access to the documents pursuant to the following clauses of Schedule 1 of the FOI Act. 4 – Documents affecting law enforcement and public safety 6 – Documents affecting personal affairs 11 – Documents relating to judicial functions etc.	Refused FOI request
TAS	The Education Department requested CYDA to refine our application however ultimately refused to process CYDA's application on the basis that it would involve "substantial and unreasonable diversion of resources."	Refused FOI request
VIC	The Department of Education and Training in relation to part a) of our request advised "it may be necessary to look at every misconduct file to determine if a document may fall in scope. We note that 'child protection matters' generally are more closely connected with the functions of the Department of Health and Human Services, so you may wish to consider if the documents you seek are held by that Department." In relation to part b) of our request we were advised "the Department does not have access to individual student demographics in the incident reporting system data-set (so could not identify if a student has a disability". We were asked to amend our request to ask for the number of students reported to DET Emergencies in relation to Special Schools). New request currently being prepared by CYDA.	Partially refused FOI request
WA	The Department of Education provided results from their Online Incident Notification System. The information consisted of 122 pages. 122 pages were offered in part only pursuant to section 24 of the FOI Act 1992 which allows for exempt material to be deleted from documents so that documents can be released.	The Department provided a reports containing 122 incidents.

What is clear from our FOI requests, and from the information we did receive, is that the state and territory government education jurisdictions do not collect data in the same way, or provide it in a format that is comparable to look at the nature of the incident or allegation, the factors leading up to the incident or allegation, the detailed nature of the incident or allegation or whether a human rights approach was taken by the school, for example aiming to eliminate restrictive practices or taking an inclusive education approach as defined by the CPRD.

In reviewing the incidents for jurisdictions, in some cases it is difficult to look at any detail about the nature of the incident, for example, Australian Capital Territory. Queensland and New South Wales provided more detailed information which could assist with looking at systemic abuse issues.

While Queensland and New South Wales reported on allegations of misconduct against employees and whether they have been sustained, Western Australia reported from its Online Incident Notification System. In reviewing many of the incidents from WA in many cases the incident is reported in the context of what the student had done wrong and how the school responded, rather than the context and antecedents.

While we have not yet had the capacity to do a full thematic analysis of the FOI results we have received it will be difficult from the information to make conclusions and comparisons because of the data limitations.

Another challenge is the complete fragmentation of legislation, oversight bodies and complaints mechanisms across Australia. While in some states there are Commissioners for Children and Young People, Public Advocates, and Ombudsmen with responsibility for complaints and investigations about education, their powers are inconsistent. Families have difficulty because of this complexity and fragmentation in making complaints and having them independently reviewed. Many have reported to CYDA their complaints are minimised, ignored or that they are subject to harrowing processes by education departments which makes them fearful of reprisals against their child.

Recommendation 6.4 of the Royal Commission into Institutional Responses to Child Sexual Abuse was that "All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission".[14] However, these standards were developed in a preventing sexual abuse context.

As of February 2019, the National Principles for Child Safe Organisations were endorsed by members of the Council of Australian Governments, including the Prime Minister and state and territory First Ministers. The principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. Many states and territories are in the process of implementing reportable conduct schemes. However the standards and the reportable conduct schemes need to be reviewed in the context of education to determine whether they are sufficient.

[14] Royal Commission into Institutional Responses to Child Sexual Abuse

Detailed case studies

Following the education survey, we contacted four parents with their permission to provide detailed case studies that illustrate the broad range of challenges that students with disability face. This is just one of many case studies we could have provided from the 505 respondents to the survey.

The case studies highlight the complexity of the issues that students with disability face and the exclusionary and abusive practices of schools. Some families have needed to attend multiple schools (Charlotte and Max) or felt that segregated education or specialist units are the only alternative they have (Matthew and Max), or in one case withdrawing their children to home school because of the lack of inclusion and abuse (Thomas).

Charlotte's story

Charlotte*, 10, is a student with Asperger's Syndrome who was recently withdrawn from a Melbourne private school after bullying that became so bad she stopped attending. Her parents felt they had no choice but to remove her from the school after incidents that included her being pushed off a pier, and hiding in a garbage bin to escape taunting.

"It just got to a point where she was unsafe," says Charlotte's mother Nicole*.

"She was being hurt and the teachers were just saying that it was always an accident – if [other children] hurt her it was because she didn't want to play with them.

"But she genuinely didn't want to play with certain children because they were being rough to her or mean to her or they were breaking her comfort toys."

On one occasion, Charlotte was admitted to hospital suffering severe anxiety and stress after a teacher confronted her with a false accusation that she had stolen another child's property.

"The teacher said to Charlotte, 'Did you do this?' and yelled and said, 'Why would you do this?' … and Charlotte didn't say anything, she shut down," Nicole says.

Two days later, she "just stopped functioning"; her walking and speech were affected and she "felt pain everywhere". The hospital wrote to the school but the family received no response.

"All the teacher said was 'but the other kids blamed Charlotte'."

In a separate incident, she was taken to hospital after being hit across the head with a stick and knocked to the ground by another child. Other injuries Charlotte suffered while at the school included black eyes, and a hurt shoulder caused by a child who pushed her over and jumped on her back.

Nicole says Charlotte had an Individual Education Plan in place for just a single term, and it contained points such as "Charlotte will not walk off on a 'group of friends'".

"I said to the teacher, 'Kids spit on her, why would she not just walk off?' Why does she have to say to them, 'I'm going to leave now, I don't want to play with you'? No one else has to do that but Charlotte does.

Sometimes, other children were just too socially demanding for her, exacerbating her anxiety. However, Nicole says teachers were always perplexed as to why Charlotte would favour playing with one, gentler child rather than in a large group.

"This is not uncommon for autistic children and they were told several times."

Charlotte has recently started attending a Catholic school; she had previously also attended a public primary.

Nicole says all three schools have been “a nightmare”, citing a lack of understanding of Asperger’s Syndrome and Charlotte’s individual needs.

“They just look at her and think that there’s nothing wrong with her and she doesn’t need any support. But behind what looks normal to everybody else, she does need a lot of support and they don’t understand that. They don’t understand that if she’s overwhelmed or anxious she’s not taking in anything, she’s not learning anything.”

Another issue has been a tendency to group children with disability into one category.

“They don’t understand that there are differences, and that Charlotte has other comorbidities that other Asperger’s kids don’t have,” Nicole says.

“I asked the [private] school for some alone or ‘refocus time’ for Charlotte after outside play, as this was the most stressful part of her day. The teacher would round up children who had behavioural issues and include Charlotte, and they would go to the office and each face a corner of the wall and sit there for five to 10 minutes. The other kids were rolling around and making noises. Charlotte found this whole exercise very upsetting and I eventually put a stop to it.”

The family believes Charlotte has not received adequate support in her education and that teaching staff don’t have the necessary training to provide an enriching environment for her.

“The class would get so chaotic that she would just go to the toilet,” Nicole says of the private school.

“She said sometimes she would be under the table and no one would know that she’s disappeared.

“Charlotte is very compliant, well behaved and quiet so [the attitude seems to be] why would you devote any time to Charlotte when you’ve got 10 other kids running around.”

Another issue has been exclusion. Nicole cites an example where Charlotte was falling behind in maths but wasn’t able to join a group available for children with maths difficulties.

“Even in the playground – Charlotte struggles in the playground – but they have other activities that she could join in. But she wasn’t told about these groups. It’s almost like, ‘Well, it’s not for her, it’s for other kids’. And I don’t understand why.”

These negative experiences have taken a toll on the family, with Nicole worried she will lose her job because Charlotte attends school only three to four days a week at best. Advocating for her child’s safety has also been an exhausting task.

“At both schools, the private and public, it was just constant.”

“We’ve just had such a horrible journey. It’s just awful. It’s almost like because Charlotte’s different, she’s [viewed as] less.”

*names have been changed.

Matthew's story

Perth student Matthew* was withdrawn from the kindergarten program at his first primary school after his mother Julie* arrived to find him, then aged only four, screaming and pinned under a chair with the principal sitting on top.

Matthew, who was later diagnosed with autism and a high degree of sensory processing disorder, had been repeatedly suspended, with Julie receiving a phone call from the school within only the first three days of the program.

"The principal had no understanding of disability," she says.

"Within two weeks, and we're only talking about a few days of school here, they must have already restrained him at some stage. They didn't tell me."

The final restraint was "the last straw" for Julie. She says Matthew had a breakdown following the incident, and "ended up in emergency wanting to get 'a new brain', banging his head against walls and windows as he was told he was stupid".

Julie removed Matthew from the school but struggled to find another.

"[I tried] 37 schools – no one would take him."

Matthew spent a term solely at an education support centre co-located with a primary school, but when he had to move on to the mainstream school, "the principal told me he didn't want him there", Julie says.

She contacted WA political representatives and the school then accepted Matthew.

"The deal was I wasn't allowed to talk to the principal or have any conversation with him at all," Julie says. "I had to deal with the deputy."

After pre-school, Matthew was no longer allowed to attend the education support centre and would have to attend the mainstream school full-time in Year One. It was then the principal told Julie that there would be a new classroom structure in Year One, with 75 children in a mixed class, open rooms, teachers who would only be staying six months because they were going on leave, and regularly changing education assistants.

"I said, 'You're doing this so I won't come here, aren't you?'," Julie says.

"He said, 'No, we're just trying something new'.

"You can't put an autistic child in an open classroom with 75 kids because he's got sensory disorder as well. The noise would just be absolutely deafening to him."

Matthew moved to another school with a specific autism program but when he began Year Two, "it lasted two weeks and they suspended him and said he's not coming back".

Julie says this followed an incident where he was tackled to the ground and pinned by a sports teacher while sitting alone outside, and he began to fight the man.

“The story that the sports teacher gives is that ‘I gave him a loving embrace and we accidentally fell to the ground’.

“[Matthew is] very scared of people restraining him because it’s been done so many times for the wrong reasons.”

Now nine, Matthew is currently attending a special school environment where he has a private classroom as well as a joint classroom with other children with disabilities. He receives one-on-one support full-time, with a trained staff of five education assistants.

“It took us eight months to get him to get out of my car and to go to the classroom after what [the previous school] had done to him,” Julie says. “He was so frightened of school and so upset he would lash out at anyone.”

Matthew’s situation now is “much better”, she says, adding, “I know they mean well, which is a good start”.

“He really should be in mainstream and that’s where we need to aim … but at the moment we’re just doing ‘gentle, gentle’ because it went so badly last year.”

Unable to work because she needs to be “on call” for Matthew when “anything goes wrong”, Julie is selling their house because she can’t afford to keep it.

“It shouldn’t have been that way,” she says.

“If they’d done the right thing by him when he first went into school, he would have been fine.”

Julie says the “devastating” effect of Matthew’s treatment at school led to him “lash out” at her when he felt unsafe, and the difficulty in finding support meant her only option was to call the police for help, “which never ends well”.

“Matthew is bright, talented and happy. He should never have been put through this in what I believed should have been a safe place for him.”

*Names have been changed

Max's story

Max*, 8, has autism and has been repeatedly suspended from a Perth primary school this year despite only being allowed to attend two hours a day.

His mum Laura* says the school tried to push Max out "for months", treating him like a "complete criminal" and isolating him in an office without any peers.

Sadly, this was not Max's first experience of being isolated and restrained. He began his schooling at a Perth Catholic school where, as a five year-old, he was put in an office for up to two hours at a time while a staff member sat at the door with their back to him. His parents learned about this after insisting on the creation of a communication book documenting his day.

On the advice of Max's psychologist, they withdrew him from the Catholic school and he was enrolled at the public primary. But despite an encouraging start, Laura says Max was later deemed "too much of a challenge".

"They started calling me every minute to pick him up, sometimes by 10am, and then from probably halfway through term one this year, they said to me, 'He only can come in for two hours a day – nine 'til eleven – that's it'," she says.

The impact on the family was "huge" and they had to pay support workers to assist at home.

"I was home-schooling him basically, which was their job, and they'd ring me up and say, 'Don't bring him to school today, NAPLAN's on. We can't have him distracting the other children'," Laura says.

"And the thing is, he wasn't even in the classroom. At this point they'd put him in an office all by himself with a teacher's aide."

Laura says the school would never tell her and her husband what led to Max's behaviour.

"We'd say to them, 'What was the antecedent? The behaviour doesn't occur unless something's triggered it. What were the steps that led to that? What was requested of him, or how did it progress?'

"They could never tell us that, or they'd say, 'It came out of the blue, there was no reason'.

"But there's never no reason, and that to us was a big sign of their lack of understanding of him as a whole person."

The situation progressed, with Max receiving "suspension after suspension". On one occasion, he used his elbow to smash a window after being shut in an office with an aide for continuing to throw Lego into a hallway.

"They knew … at this school that one of the biggest anxiety provokers [for Max] was feeling trapped and caged in, and that would be enough to escalate him to a point of dysregulation where he'd just act out," Laura says.

When the school rang her to pick Max up, she was told he had been suspended for property damage but not that he had been injured.

"So I'm aghast when I arrive and I see him bandaged up and the deputy principal's telling me to take him to the doctor, he might need stitches."

Max's parents told the school they wouldn't withdraw him unless a better option could be found. The school consulted with the state education department and made alternative recommendations.

“[This school] was amazing,” Laura says. “They had kids just like Max who were high functioning, very intelligent, but with behavioural issues.”

The family knew it had a waiting list and so told his primary school that unless they could get a place at the alternative school they would stay put and increase his hours to full-time.

“We knew that they didn’t want that, because they have been trying to get him out for so long and reduce his hours.

“It’s just even ridiculous that you have to play these kinds of games.”

Max has received a temporary place at the new school and Laura says he is “a new child” since beginning there, making friends and looking forward to attending.

“He said to me, ‘None of the teachers follow me to the toilets Mum’,” she says.

“They treat him like a human.

“It reinforces even more how detrimental I feel the last school was for him.”

*Names have been changed

Thomas' story

Thomas*, 9, has been home-schooled for the past two years after his public primary school in south-east NSW cut his hours from full-time to just two hours a day, two days a week.

His mum Zoe* says that instead of being treated as a child in need of one-to-one educational support, Thomas, who has autism, was treated as a student that just wouldn't comply.

"I've got three pages of incident reports from the school and he's being disciplined, punished and sent home for things like disobedience, deliberately not following instruction, not doing as asked, refusing to comply," she says.

"He's verbal and he's intelligent so it's assumed that all those issues are choices.

"He's autistic – he doesn't do these things by choice."

Thomas experienced seclusion at the school, including being segregated in a small room in the library.

"They would lock him in there by himself all day with one teacher who would just watch him write stories," Zoe says.

"If he wanted to leave he needed permission, and the one time that he did try and get out because he didn't want to be in there, the teacher blockaded the door and he attacked the teacher and popped the teacher's shoulder out."

Zoe was told autism did not qualify for the funding of a full-time aide, despite his paediatrician, occupational therapist and "everybody that's ever had contact with him" determining that Thomas needs one-to-one assistance.

He was routinely sent out of class to the principal's office, which Zoe says made things worse because he learned that this was a way to escape an uncomfortable or upsetting environment.

The school then starting sending him home "just about every second day", before moving him to a different class, which he didn't cope with.

"On top of that, they then said, 'Okay, we're going to cut him down to two hours a day, two days a week, and if you won't comply with this … then we have no recourse other than to just continue suspending him – he's not allowed back'."

Zoe says Thomas was so anxious and depressed he was self-harming.

"His negative behaviours were increasing ten-fold. He was losing abilities that he had. He had gained new tics that we hadn't seen before. He had been bullied and attacked in the toilets by other students and nothing was done, yet if Thomas attacked somebody back after they had hit him … Thomas is the one suspended and sent home.

"It just got worse and worse and worse, and it got to the point where I said, 'Okay, well, I'm sorry, we're not coming back. If you can't give him the education he's entitled to, we're not coming back'.

Zoe, who is autistic herself, has been home-schooling Thomas ever since. She paid $800 a term for a complete education package she could deliver.

"Because I don't have the executive functioning skills or the time to sit down and write six months' worth of planning, and I was told, 'Well, that's not good enough'."

She describes having to constantly advocate for her child as exhausting and “completely demoralising”.

Zoe says that while some schools were happy to make “token, on-the-surface efforts” towards inclusion, “if that inclusion actually costs any actual time or money or … staff being appropriately trained, then it’s not actually happening at all”.

“And they’ll just do everything they can to force you out.”

*Names have been changed.

Appendices

A. Towards inclusive education: A necessary process of transformation

B. Fact Sheet: What is inclusive education?

C. Fact Sheet: The benefits of inclusive education

D. Fact Sheet: Addressing ableism in education

E. Fact Sheet: Transformation to inclusive education: the next steps

F. Time for change: The state of play for inclusion of students with disability, results from the 2019 CYDA National Education Survey

G. Freedom of Information Request (FOI) information from state and territory education jurisdictions