



MONASH University
Castan Centre for Human Rights Law

**Submission to the
UN Office of the High Commissioner for
Human Rights on
Human Rights Council resolution 37/20**

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The Castan Centre for Human Rights Law welcomes the opportunity to make this submission to the Office of the High Commissioner for Human Rights on “empowering children with disabilities for the enjoyment of their human rights, including through inclusive education.”

This submission is drawn in part from a major report released by the Castan Centre on the educational outcomes and experiences of children with disability in the mainstream school system in the State of Victoria, Australia. The full report can be accessed at our website:

<https://www.monash.edu/law/research/centres/castancentre>

Please note that under Australia’s federated system of governance, schools are the responsibility of state governments. This submission deals with laws, policies and practices in place in the State of Victoria.

1) Ensuring access to inclusive education for children with disabilities is one key way in which they can be empowered.

a. Please identify relevant national laws and policies intended to ensure the inclusion of children with disabilities in the general education system and the transition from segregated to inclusive settings.

The school system in the State of Victoria (and indeed all other Australian states and territories) is not properly inclusive. In addition to mainstream schools, there are more than 80 government specialist schools including schools for students with mild, moderate and profound intellectual disabilities, for Deaf and hearing impaired students, for students with Autism Spectrum Disorder and for students with a physical disability.¹ Whilst the Victorian Government Inclusive Education Policy has a stated aim to ensure that students with disability can participate in mainstream schooling on the same basis as their peers, specialist schools claim to be more accessible in terms of the environment and curriculum.² To be eligible for a specialist school in Victoria a student must be eligible for the specific funding and also meet that specialist school’s particular enrolment criteria.³

Although the Inclusive Education Policy expresses a commitment to making the mainstream school system more inclusive for students with disability, the Government of Victoria has made no explicit commitment to eliminating specialist schools.⁴ Rather, the Department maintains that ‘specialist schools play a key role for in the provision of supported inclusion models in Victoria’ and presents mainstream schooling as

¹ Association for Children with a Disability, *Government Specialist Schools and Units* (17 October 2015), <<https://www.acd.org.au/government-specialist-schools-units/>>.

² Department of Education and Training, School Policy Advisory Guide, ‘Students with a Disability’.

³ Association for Children with a Disability, *Applying for government specialist schools or units* (14 October 2015), <<https://www.acd.org.au/applying-government-specialist-schools-units/>>.

⁴ Department of Education and Training, School Policy Advisory Guide, ‘Students with a Disability’.

'alternative to stand-alone specialist schools which increases choice for families.'⁵ This is inconsistent with international standards which recognize the need to work towards 'schools for all' which employ child-centred pedagog[ies] capable of successfully educating all children, including those who have serious disadvantages and disabilities.'⁶

Moreover, our research reveals that students with disability often face barriers when seeking enrolment at mainstream schools. Under Victorian law and policy, any prospective student is entitled to enrol at their designated neighbourhood mainstream government school, without discrimination on the basis of disability. However, approximately fifteen percent of parents interviewed as part of our research experienced some form of difficulty enrolling their child in a mainstream Victorian Government school, and fifteen percent of parents reported feeling pressured to leave their school once their child had been enrolled.

5. Please identify relevant independent accountability mechanisms to monitor the situation of children with disabilities and their access to essential services, including to inclusive education in the general system without discrimination.

At present in Victoria, schools and their leaders face few, if any, consequences for failing to properly implement Department of Education and Training policies in relation to students with disability. According to the Department, accountability is meant to be achieved through the school performance and improvement regime.⁷ This comprises self-assessment components and a four-yearly school external review process. However, compliance with Department policies (or indeed, legal requirements) relating to inclusive education is not expressly assessed under any of these processes.

The complaints system is also inadequate for addressing concerns about the implementation of Department policies. While parents do have the right to escalate complaints to the Department and the Independent Office for School Dispute Resolution if they are unsatisfied with the result at the school level, our research has identified significant barriers to parents making complaints including low levels of awareness among parents of the complaints process, structural barriers, and a lack of transparency regarding the handling of complaints.

⁵ Department of Education and Training, *School Provision Planning Guidelines for Students with Disabilities* (2016), <<https://www.education.vic.gov.au/Documents/about/programs/infrastructure/school-provision-planning-guidelines-for-students-with-disabilities.pdf>>.

⁶ UN Educational, Scientific and Cultural Organization (UNESCO), *Salamanca Statement and Framework for Action on Special Needs Education*, adopted by the World Conference on Special Needs Education: Access and Quality, 7-10 Jun. 1994, 3.

⁷ Email correspondence with the Department of Education and Training, 24 Apr. 2018 (on file with the authors).

6. Please provide relevant examples of efforts to monitor the inclusion of children with disabilities through disaggregated national data, including how the number of children with disabilities enrolled in education is recorded in the national data

In 2015 the Australian Government introduced the Nationally Consistent Collection of Data on School Students with Disability (NCCD).⁸ The NCCD requires all Australian schools (in all states and territories) to provide data annually on the number of students with disability receiving educational adjustments to enable them to participate in education on the same basis as students without disability.⁹ A student must be included in the NCCD if they meet the definition of a person with disability as defined in the *Disability Discrimination Act 1992* and the functional impact of their disability results in the school actively addressing their needs.¹⁰ The NCCD also requires schools to provide information on the type of disability experienced by the student (physical, cognitive, sensory or social/emotional) and on the level of adjustment required.¹¹ While the NCCD is in its infancy, it represents a significant step forward, and a valuable opportunity to strengthen the evidence base for inclusive education policies and programming.

⁸ Nationally Consistent Collection of Data on School Students with Disability, *Quick Guide*, <http://www.schooldisabilitydatapl.edu.au/docs/default-source/default-document-library/quick_guide.pdf>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.