



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

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# Public Hearing Report

## Public hearing 7

Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts

Brisbane  
12 to 16 October 2020  
and 7 May 2021

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## **Commissioners**

The Honourable Ronald Sackville AO QC

Dr Rhonda Galbally AC

Ms Andrea Mason OAM

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# Contents

<b>Part 1: Introduction and background</b> .....	<b>1</b>
Public hearing 7 .....	2
Scope and purpose .....	2
Who the Royal Commission heard from .....	3
Preparation of this Report .....	4
Past inquiries .....	5
Disability Standards for Education Reviews .....	6
Key terms .....	6
Structure of this Report .....	8
<b>Part 2: Meaning of safe, quality and inclusive education for students with disability</b> .....	<b>9</b>
Terms of reference of the Royal Commission .....	9
<i>Convention on the Rights of Persons with Disabilities</i> .....	9
Views on inclusive education .....	11
<b>Part 3: Evidence from people with disability and their families</b> .....	<b>15</b>
‘Jack’, ‘Sharon’ and ‘Alex’ .....	15
Quaden and Yarraka Bayles .....	16
Maria Scharnke .....	17
‘Sarah’ and ‘Kobe’ .....	18
‘Leif’ .....	20
‘Alice’ .....	21
‘Sam’ and ‘Amy’ .....	22
<b>Part 4: Sam’s case</b> .....	<b>23</b>
Sam’s experiences in education .....	23
Appeals against suspension decisions .....	26

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Classification of restraint as an adjustment . . . . .	28
Impact of suspension policies on students with disability. . . . .	29
Effectiveness of suspensions . . . . .	30
Denial of access to quality, inclusive education . . . . .	31
Findings . . . . .	32
<b>Part 5: Analysis of barriers to safe, quality, inclusive education . . . . .</b>	<b>33</b>
Attitudes . . . . .	35
Attitudes held by educators . . . . .	35
Bullying . . . . .	37
Workforce capacity . . . . .	39
Disability awareness and understanding . . . . .	40
Training for educators . . . . .	42
Oversight and regulation . . . . .	43
Denial or discouragement of enrolment . . . . .	44
Reasonable adjustments . . . . .	47
Complaints . . . . .	50
Exclusionary discipline . . . . .	51
Restrictive practices . . . . .	53
Data . . . . .	57
Gaps in data . . . . .	58
Current data collection practices . . . . .	59
Funding . . . . .	62
Operation of funding models . . . . .	62
Funding-related barriers to education . . . . .	66
Area for further inquiry . . . . .	68

<b>Part 6: Findings and further inquiries</b> .....	<b>69</b>
Findings .....	69
Findings in relation to Sam’s case.....	69
General Findings .....	70
Further inquiries .....	71
<b>Part 7: Appendices</b> .....	<b>73</b>
Appendix A: Witnesses who gave evidence at the hearing .....	73
Quaden and Yarraka Bayles .....	73
Michelle O’Flynn and Nikki Parker (Queensland Advocacy Incorporated) .....	73
Mary Sayers (Children and Young People Australia) .....	74
Cecile Elder (Family Advocacy).....	75
Dr David Armstrong .....	76
‘Sam’ and ‘Amy’ .....	77
Frank Potter .....	77
‘Sarah’ and ‘Kobe’ .....	78
Dr Kate de Bruin .....	79
Associate Professor Shiralee Poed.....	79
‘Jack’, ‘Sharon’ and ‘Alex’ .....	80
Lesley Theodore .....	80
Emma Haythorpe .....	81
Ann Howlett.....	81
Professor Linda Graham .....	82
Maria Scharnke .....	83
Chris Lassig.....	83
‘Leif’ .....	84
‘Alice’ .....	84
Dr Lee Sturgeon .....	84

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Appendix B: Parties with leave to appear . . . . .	85
Appendix C: Key documents . . . . .	86
Appendix D: Acronyms and abbreviations . . . . .	87

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# Part 1: Introduction and background

1. In October 2020, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability conducted a public hearing in Brisbane to investigate the barriers experienced by children and young people with disability in accessing safe, quality and inclusive education (Public hearing 7). This is the Report of the Commissioners who participated in Public hearing 7 (Report).<sup>1</sup>
2. Investigating barriers to accessing safe, quality and inclusive education is a priority for the Royal Commission.<sup>2</sup> This priority is informed by the Royal Commission's terms of reference, which direct it to inquire into what governments, institutions and the community should do to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.<sup>3</sup>
3. Education is critically important to the inclusion and independence of children and adults with disability across their life course. It is a determinant of future outcomes, such as employment and health, and vital to the full development of an individual's potential.<sup>4</sup>
4. The Royal Commission's terms of reference also recognise Australia's international obligations to take appropriate measures to promote the human rights of people with disability.<sup>5</sup> These obligations are set out in the *Convention on the Rights of Persons with Disabilities (CRPD)*, to which Australia is a State Party.
5. Access to education is a fundamental human right which is specifically protected for people with disability under the CRPD.<sup>6</sup> Article 24 requires States Parties to recognise the rights of people with disability to education without discrimination and on the basis of equal opportunity, and to ensure an inclusive education system at all levels.<sup>7</sup>
6. The right to inclusive education has been a core part of the work of the Royal Commission.
  - Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts (Public hearing 7) was the second public hearing of the Royal Commission dedicated to examining the experiences of students with disability in education.

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1 Commissioner Atkinson resigned as a Commissioner with effect from 24 June 2021 and has not participated in the preparation of this Report.

2 Transcript, the Honourable Ronald Sackville AO QC, Ceremonial hearing, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Brisbane, 16 September 2019, P-22 [9].

3 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019.

4 Transcript, Dr Kerri Mellifont, Public hearing 7, 12 October 2020, P-8 [34–36].

5 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019, preamble.

6 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UTS 3 (entered into force 3 May 2008), Art 24.

7 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UTS 3 (entered into force 3 May 2008), Art 24(1).

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- Public hearing 2: Inclusive education in Queensland – preliminary inquiry (Public hearing 2) was held in November 2019. It inquired into inclusiveness in education for students with disability and the implementation of policies and procedures in the Queensland government education system for inclusive education.
  - Public hearing 9: Pathways and barriers to open employment for people with disability (Public hearing 9) considered education in the context of employment.<sup>8</sup>
7. The Royal Commission intends to hold further public hearings to examine the experiences of students with disability, including a hearing on special/segregated education in 2022. In addition to public hearings, the Royal Commission is progressing its work on education through research and analysis, including analysis of data on the education of people with disability; and consultation with people with disability and key stakeholders in the education sector.

## Public hearing 7

8. Public hearing 7 was held from 12 to 16 October 2020 at the Royal Commission offices in Brisbane, Queensland. It resumed on 7 May 2021 for the presentation of oral submissions from Counsel Assisting and parties with leave to appear.
9. Public hearing 7 took place before the Chair, the Honourable Ronald Sackville AO QC and Commissioners the Honourable Roslyn Atkinson AO, Dr Rhonda Galbally AC and Ms Andrea Mason OAM. Commissioner Atkinson resigned as a Commissioner with effect from 24 June 2021 and therefore has not participated in the preparation of this Report.
10. Counsel Assisting the Royal Commission at Public hearing 7 were Dr Kerri Mellifont QC, Ms Elizabeth Bennett, Mr Andrew Fraser and Mr Ben Power.

## Scope and purpose

11. The scope of Public hearing 7 was to investigate the barriers experienced by children and young people with disability in accessing safe, quality and inclusive education<sup>9</sup> in mainstream schools. In this Report, the terms ‘mainstream education’ or ‘mainstream school’ refer to schools, classes and units which provide education to both students with and without disability. The hearing focused on the government school systems in the jurisdictions of New South Wales (NSW) and Queensland.

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8 Disability Royal Commission, *Outline of Submissions of Counsel Assisting following Public hearing 9: Pathways and barriers to open employment*, 5 March 2021, p 50–53 [221–232].

9 ‘Inclusive education’ is defined in Part 2 of this Report.

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12. The purpose of this hearing was to address further the issues identified in the Queensland education system at Public hearing 2. NSW was included as an additional jurisdiction to enable comparisons to be drawn across two education systems and support the development of findings and recommendations about inclusive education by the Royal Commission.
  13. Public hearing 7 examined the following issues in relation to mainstream education settings:
    - the use of exclusionary discipline<sup>10</sup> against students with disability in education, including its extent and impact
    - the provision of adjustments and supports, and the barriers to making reasonable adjustments and supports available for students with disability
    - denial or discouragement of enrolment of students with disability
    - the availability of data about the experiences of students with disability in education
    - funding models used to support students with disability.

## Who the Royal Commission heard from

14. Seven young people with disability gave evidence about their experiences at school during Public hearing 7.
15. Parents of students with disability, disability advocates, health professionals, academic education experts, and representatives from the focus jurisdictions of Queensland and NSW also gave evidence at the hearing.
16. Advocates and academics who gave evidence drew on their experience across Australia. Students and parents gave evidence of their own direct experiences in Queensland and NSW. A full list of witnesses is at **Appendix A**.
17. Several parties were granted leave to appear at Public hearing 7. Those parties and their legal representatives are listed at **Appendix B**.

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<sup>10</sup> The term 'exclusionary discipline' is described at [39] of this Report.

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## Preparation of this Report

18. The Report on Public hearing 2 provided a detailed overview of the policy and legislative context for the right to education; the school system in Australia; funding for school students with disability; and the definition of ‘inclusive education’.<sup>11</sup> This Report uses the same terminology and definitions set out in the Report on Public hearing 2.
19. There are practical difficulties in attempting to cover the experience of all Australian jurisdictions in a single hearing. Consequently, Public hearing 7 did not include evidence about the primary and secondary education systems of states and territories other than NSW and Queensland.
20. Submissions to the Royal Commission nevertheless indicate that many of the systemic issues identified in Public hearings 2 and 7 occur across all states and territories. These issues also align with findings of past reports and inquiries focused on the education of students with disability (discussed in further detail under Part 2). As noted above, academics and advocates who gave evidence at the hearing drew on experiences from a range of jurisdictions.
21. At the conclusion to Public hearing 7, the Chair directed Counsel Assisting to prepare written submissions setting out the key issues that emerged from the evidence (Counsel Assisting’s Written Submissions). These are available on the Royal Commission website.
22. The Royal Commission received written submissions in response to Counsel Assisting’s Written Submissions from the Australian Government, and the governments of NSW, Queensland and Victoria.
23. The Chair directed an additional day for the presentation of oral submissions by Counsel Assisting, and any oral submissions in response by parties with leave to appear.<sup>12</sup> Oral submissions were presented by Counsel Assisting, counsel for NSW and counsel for Queensland on 7 May 2021.
24. NSW and Queensland subsequently provided the Royal Commission with information in response to questions taken on notice following oral submissions.
25. The Report has been prepared considering Counsel Assisting’s Written Submissions, the written responses by parties with leave to appear, and the oral submissions made on 7 May 2021.

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11 Disability Royal Commission, *Public hearing report: Public hearing 2, Inclusive education in Queensland – preliminary inquiry*, Part 2: Background.

12 CTH DIR 00076, [3].

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26. The Report does not attempt to provide a comprehensive account of the evidence from Public hearing 7. A more detailed summary of the evidence of individual witnesses is in Counsel Assisting's Written Submissions, published on the Royal Commission website.<sup>13</sup>
  27. The Report makes factual findings about what happened in 'Sam's case' and records more general conclusions based on the totality of the evidence at Public hearing 7. The hearing proceeded on the basis that specific factual findings would not be made about the other case studies examined at the hearing – namely, the cases of 'Jack', Quaden Bayles, 'Kobe', Maria Scharnke and 'Leif'.<sup>14</sup>
  28. This Report identifies a number of areas for further investigation by the Royal Commission. Investigation of these areas will be important in developing recommendations addressing the barriers to inclusive education for students with disability for the purposes of the Final Report due in September 2023.

## Past inquiries

29. The terms of reference direct us to consider the findings and recommendations of relevant past reports and inquiries.<sup>15</sup>
30. In this Report, we consider the analysis, findings and recommendations of the following recent inquiries.
  - Urbis for the Australian Department of Education, *2015 Review of the Disability Standards for Education 2005*, Final Report, 17 July 2015 (2015 DSE Review).
  - Senate Education and Employment References Committee, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016 (Access to real learning report).
  - NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017 (NSW Ombudsman 2017 Report).
  - Deloitte Access Economics for Queensland Department of Education, *Review of education for students with disability in Queensland state schools*, February 2017 (Queensland schools disability review).
  - Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020 (2020 DSE Review).

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13 Disability Royal Commission, Public hearing 7, Brisbane – Written Submissions of Counsel Assisting, 18 May 2021, at <https://disability.royalcommission.gov.au/publications/public-hearing-7-brisbane-written-submissions-counsel-assisting> (accessed 27 September 2021).

14 Information about these cases is set out in Part 3 of the Report.

15 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019.

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## Disability Standards for Education Reviews

31. It is a requirement of the *Disability Standards for Education 2005 (DSE)* that they are reviewed at least every five years.<sup>16</sup> The 2020 DSE Review, the third review since the DSE came into effect,<sup>17</sup> was released on 12 March 2021, following the substantive part of Public hearing 7.<sup>18</sup>
32. The submissions from NSW and Queensland referred to the 2020 DSE Review.<sup>19</sup> Queensland contended that the 2020 DSE Review was 'largely synonymous with the subject matter traversed by Counsel Assisting', and that 'where there is any overlay ... the form of the 2020 DSE Review recommendations [should] be preferred'.<sup>20</sup>
33. In our view, this contention misconceives the respective roles of this Royal Commission and the 2020 DSE Review. The DSE is a tool, albeit an important one, to prevent violence, abuse and neglect of students with disability. However, the DSE applies in specific circumstances. The scope of this Royal Commission, set out in the terms of reference, is much broader and requires consideration of a range of policy and legislative safeguards against violence, abuse, neglect and exploitation of people with disability, including children and young people. Accordingly, while the Royal Commission is aided by the work of the 2020 DSE Review and the submissions of the states to that review, the responsibilities of the two are far from co-extensive.

## Key terms

34. This section explains or defines key terms or phrases used by witnesses at Public hearing 7.
35. An **adjustment** is any action or measure that a school takes that enables a student with disability to participate in the same way as their peers.<sup>21</sup> These can include variations to instruction, assessment, tasks, resources or environments that remove barriers to enable students with disability to access, participate and make progress in their learning.<sup>22</sup> An **intervention** is a subset of adjustments that provides students with targeted support in an area where they are underachieving.<sup>23</sup>

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16 *Disability Standards for Education 2005* (Cth), [11.1].

17 Department of Education, Skills and Employment, *Final Report of the 2020 Review of the Disability Standards for Education 2005*, March 2021, p iv.

18 Department of Education, Skills and Employment, *Final Report of the 2020 Review of the Disability Standards for Education 2005*, March 2021.

19 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [7], [75]–[76], [84]; Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0002, [3]–[6].

20 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0002, [6].

21 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [23].

22 Exhibit 7-113, 'Statement of Kate de Bruin', 28 September 2020, at [41]; Transcript, Kate de Bruin, Public hearing 7, 14 October 2020, P228 [4–21].

23 Exhibit 7-113, 'Statement of Kate de Bruin', 28 September 2020, at [46].

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36. The term **accommodation** is used instead of adjustment in many countries.<sup>24</sup> While ‘adjustment’ and ‘accommodation’ were used interchangeably by many witnesses, we have generally adopted the term ‘adjustment’ to describe measures provided to support students with disability.
37. The term **reasonable adjustment** has a specific legal meaning under the *Disability Discrimination Act 1992 (Cth)*.<sup>25</sup>
38. **Educational neglect** describes situations where students with disability are denied access to safe, quality and inclusive education (as defined in Part 2 of this Report).
39. **Exclusionary discipline** means the application of a consequence that results in the withdrawal of educational provision to children,<sup>26</sup> including suspensions, expulsions and other actions.<sup>27</sup> Particular types of exclusions include:
- **Suspensions:** short and long-term suspensions from school.
  - **Expulsions:** meaning permanent exclusion from school and enrolment cancellations,<sup>28</sup> noting that in Queensland the term ‘exclusion’ means ‘expulsion’.<sup>29</sup>
40. **Gatekeeping** describes the denial of access to, or informal discouragement of children and young people with disability from attending, the school or education facility of their or their families’ choice.<sup>30</sup>
41. **Restrictive practices** include:<sup>31</sup>
- **Physical restraint:** Using physical force to immobilise a student or reduce their movement; for example holding a student’s torso, arms, legs, or head so that they cannot move freely.
  - **Chemical restraint:** Providing medication to a student to subdue a student’s behaviour.<sup>32</sup> This does not include the use of medication prescribed by the

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24 Exhibit 7-113, ‘Statement of Kate de Bruin’, 28 September 2020, at [41]

25 Section 4 of the *DDA* defines a reasonable adjustment as follows: ‘an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person’. Sections 5(2) and 5(3) of the *DDA* define discrimination to include a failure to make ‘reasonable adjustments’ for a person with disability where that failure has the effect that the person with disability is treated less favourably than a person without disability would be treated in circumstances that are not materially different.

26 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [38(a)].

27 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [38(a)].

28 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [38(g)].

29 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [127].

30 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive Education in Queensland—Preliminary Inquiry*, October 2020, [43].

31 Exhibit 7-114, ‘Statement of Shiralee Poed’, 25 September 2020, at [157].

32 Exhibit 7-114, ‘Statement of Shiralee Poed’, 25 September 2020, at [158].

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student's medical practitioner unless the medication is used above or below the prescribed dosage or frequency authorised.

- **Mechanical restraint:** The use of a device, including harnesses, straps, clothing, or equipment, to subdue a student or restrict their movement.

## Structure of this Report

42. The Report is organised into seven parts. The six remaining parts after Part 1 are as follows:
- Part 2 explains the meaning of the phrase 'safe, quality, inclusive education' for the purposes of this Report.
  - Part 3 summarises evidence given at the hearing by people with disability and their families.
  - Part 4 provides a chronological account of 'Sam's case' and sets out findings about the case.
  - Part 5 analyses the key barriers to inclusive education identified through the evidence at Public hearing 7.
  - Part 6 summarises the findings and areas for further inquiry arising from Public hearing 7.
  - Part 7 contains the appendices.

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## Part 2: Meaning of safe, quality and inclusive education for students with disability

43. The focus of Public hearing 7 was on barriers to safe, quality and inclusive education for students with disability. It is important to explain the meaning of these terms within the context of this Report, each of which are linked to the terms of reference and grounded in human rights principles set out in the *CRPD*.

### Terms of reference of the Royal Commission

44. The concepts of quality, safety and inclusion are each explicitly referenced in the terms of reference.
45. At the outset, the terms of reference recognise that ‘people with disability have the same rights as other members of Australian society to live and participate in safe environments free from violence, abuse, neglect and exploitation’.<sup>33</sup>
46. They also direct the Royal Commission to consider ‘all aspects of quality and safety of services ... provided by governments, institutions and the community to people with disability’<sup>34</sup> and to inquire into ‘what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation’.<sup>35</sup>

### Convention on the Rights of Persons with Disabilities

47. Safety, quality and inclusion are also central to the fundamental human rights of people with disability as set out in the *CRPD*.
48. The *CRPD* recognises the concept of safety by setting out the rights of people with disability to:
- live a life free from exploitation, violence and abuse<sup>36</sup>
  - liberty and security of person<sup>37</sup>
  - freedom from torture or cruel, inhuman or degrading treatment or punishment.<sup>38</sup>

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33 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019.

34 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019.

35 *Letters Patent* (Cth), 4 April 2019 amended 13 September 2019.

36 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), art 16.

37 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), art 14.

38 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), art 15.

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49. For the purposes of this Report, the term ‘safe’ education for students with disability is consistent with the terms of reference and the *CRPD*; namely, freedom from violence, abuse, neglect and exploitation in education settings.
50. Article 24 of the *CRPD* is central to understanding the terms ‘quality’ and ‘inclusive’ education in Public hearing 7, which requires States Parties, including Australia, to recognise the rights of people with disability to education without discrimination and on the basis of equal opportunity.<sup>39</sup> Article 24(2) states:
2. In realizing this right, States Parties shall ensure that:
    - (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
    - (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
    - (c) reasonable accommodation of the individual’s requirements is provided;
    - (d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
    - (e) effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.<sup>40</sup>
51. We understand that the meaning of the terms quality and inclusion in education are inextricably linked. Beyond merely being present in the classroom, students with disability have a right to full and effective participation, attendance and achievement.<sup>41</sup> As described in the *General comment No. 4 on the right to inclusive education* adopted by the CRPD Committee in 2016:

*Inclusion* involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of

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39 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), art 24.

40 The full text of Art 24 is reproduced in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive education in Queensland – preliminary inquiry*, October 2020, [22].

41 Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education*, UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [9].

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the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.<sup>42</sup>

52. For the purposes of this Report, ‘inclusive education’ incorporates quality and inclusion in education, and refers to settings where all students have access to and can participate in learning to the maximum extent possible alongside their similar aged peers.<sup>43</sup> This requires adjustments and teaching strategies tailored to meet student’s needs.

## Views on inclusive education

53. The concept of ‘inclusive education’ was at the heart of both public hearings 2 and 7, and has been the subject of many submissions to the Royal Commission.
54. There is widespread support for ‘inclusive education’ for children and young people with disability.<sup>44</sup> The majority of jurisdictions in Australia have adopted the term ‘inclusive education’ or ‘inclusion’ in policies about education for students with disability, and all jurisdictions are at various stages of reform in this area.<sup>45</sup>
55. There is disagreement, however, about whether the continued existence of special/ segregated education settings is consistent with the obligations set out under Article 24 of the *CRPD* and the concept of ‘inclusive education’ more broadly.
56. While Public hearing 7 largely focussed on mainstream education, the issue of special/ segregated education settings and Article 24 did arise. We have therefore set out below a brief discussion of the differing views on ‘inclusive education’.
57. *General comment No. 4* of the *CRPD* Committee states that the ‘progressive realisation’ of rights under the *CRPD* requires States parties ‘to move as expeditiously

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42 Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education*, UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [11].

43 Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education*, UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [11].

44 See, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the first Education and learning Issues paper*, 28 July 2020.

45 The Tasmanian Education Department Education and the NSW Department of Education both provide statements of commitment to inclusive education, the Northern Territory Education Department has a ‘Framework for Inclusion’, Western Australia has a ‘Disability Access and Inclusion Plan 2018-23’, the ACT, South Australia and Victoria all have student with disability policies, and only Queensland has an explicit ‘Inclusive Education Policy’.

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*and effectively as possible* towards the full realisation of Article 24' (emphasis added).<sup>46</sup> Furthermore, that the realisation of Article 24:

is not compatible with sustaining two systems of education: mainstream and special/segregated education systems. Progressive realization must be read according to the overall objective of the Convention to establish clear obligations for States parties in respect of the full realization of the rights in question. Similarly, States parties are encouraged to redefine budgetary allocations for education, including transferring budgets to develop inclusive education.<sup>47</sup>

58. On this interpretation, the indefinite continuation of special/segregated schools is incompatible with the requirements of Article 24. Rosemary Kayess and Therese Sands take this view in their paper on the *CRPD*. They argue that 'the maintenance of segregated special schools or specialist units within mainstream schools leads to a system based on the discredited "separate but equal" doctrine and thus provides a discriminatory outcome'.<sup>48</sup>

59. In his report on Australia's implementation of the *CRPD*, Professor Ron McCallum came to a different conclusion, stating:

it is clear that where a ratifying country establishes or finances special schools where children with disabilities are segregated from mainstream children, such programs are counter to the ethos embodied in the General Comment. On the other hand, where children with disabilities in mainstream schools also attend some special classes or programs, for example teaching braille or sign language, this would be compatible with article 24 and with the General Comment.<sup>49</sup>

60. The Australian and state and territory governments each have their own interpretations of Article 24.

61. In a Background Paper on Article 24, the Australian Government expressed the opinion that a State Party can meet its obligations under Article 24:

through an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education

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46 See Committee on Economic, Social and Cultural Rights, *General Comment no. 3: The Nature of States' Parties' Obligation (Art. 2, Para. 1, of the Covenant)*, 5<sup>th</sup> sess, UN E/1991/23 (14 December 1990), [9].

47 Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education*, UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [39].

48 Rosemary Kayess and Therese Sands, *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2020, p 38.

49 Professor Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia's Level of Compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation, October 2020, p 119.

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options, including: enrolment in mainstream classes in mainstream schools with additional support; specialist classes or units in mainstream schools; and specialist schools as is appropriate.

... [A]n interpretation of article 24 which allows the use of both mainstream education and specialist schools for persons with disability, and consequently, respects the rights of parents of children with disabilities to choose whether to put their children in mainstream or specialist education, is consistent with article 13(3) of the *ICESCR (International Covenant on Economic, Social and Cultural Rights)*.<sup>50</sup>

62. In its submission, NSW agreed with the position put forward by the Australian Government.<sup>51</sup> They further stated that:

In NSW, inclusion is a practice, not a setting. Special settings are one option available to support the education of students with moderate to high learning and support needs.<sup>52</sup>

63. The NSW Department of Education defines 'inclusive education' as:

all students, regardless of disability, ethnicity, socio-economic status, nationality, language, gender, sexual orientation or faith, can access and fully participate in learning, alongside their similar aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs.<sup>53</sup>

64. NSW's submissions recorded that NSW has 115 Schools for Specific Purposes (SSPs) and argued that the SSPs 'have funding that permits them to enable children [with moderate to high learning or support needs] to reach their full potential'.<sup>54</sup>

65. Queensland appears to take a different view on the issue of special/segregated education. Queensland Department of Education (Education Queensland) defines 'inclusive education' to mean that students with disability can:

access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs. Inclusion is embedded in all aspects of school life, and is supported by culture, policies and every day practices.<sup>55</sup>

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50 Australian Government, *The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities Part 2 – The right to education in article 24*, 17 June 2020, CTD.9000.0001.0012, [24], [26].

51 Submissions of the State of New South Wales, Public hearing 7, 30 April 2021, SUB.0012.0001.0001, [125].

52 Submissions of the State of New South Wales, Public hearing 7, 30 April 2021, SUB.0012.0001.0001, [120].

53 Exhibit 7-086.02, NSW.0029.0018.0005, [0009].

54 Submissions of the State of New South Wales, Public hearing 7, 30 April 2021, SUB.0012.0001.0001, [121–122].

55 Exhibit 7-174.13, QLD.9999.0007.0220, [0220]; Department of Education Queensland, *Inclusive Education Policy*, April, 2020.

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66. Queensland's Inclusive Education Policy draws directly from General Comment No. 4. It makes clear that the concept of 'inclusive education' differs significantly from segregation, where 'students learn in separate environments, designed or used to respond to their particular needs or impairment in isolation from other students'.<sup>56</sup>
67. As of 10 October 2019, 43 special schools were operating in Queensland.<sup>57</sup>
68. Across both public hearings, the Royal Commission has heard from many advocates and academics who have expressed the view that Article 24 of the *CRPD*, interpreted to require an end to special/segregated education settings consistent with *General comment No. 4*, is central to achieving inclusive education.<sup>58</sup>
69. Students with disability and their parents have made clear the importance of access to mainstream education, while not explicitly referring to 'inclusive education' or the *CRPD*.
70. At Public hearing 7, Ms Scharnke told the Royal Commission:
- I do not support segregation, either in school or in broader society ... Segregation enables the mindset that if we don't see people with disability, they don't exist, and are therefore not our problem.<sup>59</sup>
71. Sarah described seeking to transition Kobe from a special/segregated school to a local mainstream school where she hoped he would make friends who lived locally and possibly have better access to employment opportunities in the community.<sup>60</sup> Amy expressed her desire for all children be able to receive the benefit of mainstream education.<sup>61</sup>

### Area for further inquiry

The Royal Commission will consider further the different understandings of Article 24 of the *CRPD*, the meaning of 'inclusive education' and how promoting and achieving inclusive education should be measured and monitored over time.

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56 Exhibit 7-174.13, QLD 9999.0007.0220, [0220].

57 Exhibit 2.1, 'Statement of Deborah Dunstone', 14 October 2019, at [40].

58 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [142–147]; Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [19].

59 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [63].

60 Transcript, Sarah, Public hearing 7, 14 October 2020, P-194 [40–46].

61 Exhibit 712, 'Statement of "Amy"', 25 September 2020, at [140].

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## Part 3: Evidence from people with disability and their families

### 'Jack', 'Sharon' and 'Alex'

72. 'Jack' is a young person with disability. Jack's parents, 'Alex' and 'Sharon', both gave evidence at the hearing. Jack provided pre-recorded evidence.<sup>62</sup>
73. Sharon described Jack as a 'super intelligent',<sup>63</sup> 'beautiful, empathetic, very kind and chivalrous young man' with a 'great sense of humour', who is 'extremely polite', and who has 'a keen sense of justice' and loves 'animals, anime and Xbox'.<sup>64</sup> Alex described his son as a 'kind-hearted young man' who 'is concerned for people less fortunate than himself'.<sup>65</sup>
74. Sharon and Alex outlined how as a young child Jack's disability went undiagnosed and others often attributed his conduct to poor parenting and misbehaviour.<sup>66</sup> They explained that after Jack was diagnosed they had difficulty accessing supports for him.<sup>67</sup> These difficulties were exacerbated by the strict application of funding criteria by Jack's school. Sharon explained that because Jack's disability did not fit within any of the specific funding categories,<sup>68</sup> she was told by his school that there was no funding available to help him at school.<sup>69</sup>
75. In recordings played at the hearing Jack spoke fondly of teachers who had reached out to him, but also described the devastating impact of feeling left behind in his education and social development.<sup>70</sup>

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62 Pursuant to a pseudonym direction made by the Royal Commission (CTHDNP00050), Jack and his parents were referred to as 'Jack', 'Sharon' and 'Alex'. Additionally Jack's surname, images of Jack and the names of state schools he attended are the subject of a non-publication direction made by the Royal Commission (CTHDNP00051).

63 Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [10].

64 Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [7].

65 Exhibit 7-116, 'Statement of 'Alex'', 24 February 2020, at [8].

66 Exhibit 7-116, 'Statement of 'Alex'', 24 February 2020, at [15–20]; Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [15–24].

67 Exhibit 7-116, 'Statement of 'Alex'', 24 February 2020, at [21]; Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [30].

68 The criteria were applied by Education Queensland's Education Adjustment Program. See Section 4 below for more information on the operation of education funding in Queensland.

69 Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [28].

70 Extracted at Transcript, Jack, Public hearing 7, 15 October 2020, P-278 [12]–P-279 [42]; Transcript, Jack, Public hearing 7, 15 October 2020, P-281 [30]–P-282 [47]; Transcript, Jack, Public hearing 7, 15 October 2020, P-283 [37]–P-285 [26]; Transcript, Jack, Public hearing 7, 15 October 2020, P-288 [44]–P-289 [47]; Transcript, Jack, Public hearing 7, 15 October 2020, P-298 [28]–P-299 [39]; Transcript, Jack, Public hearing 7, 15 October 2020, P-301 [36]–P-302 [24]; Transcript, Jack, Public hearing 7, 15 October 2020, P-304 [30]–P-305 [18].

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76. Sharon and Alex said that one of the hardest things was watching Jack being excluded while at his first primary school. When Jack repeated Prep, his new teacher ‘tried to manage his behaviour by separating him from the rest of the class’.<sup>71</sup> It was always Jack and another student with a disability ‘off away from the other students, not participating’.<sup>72</sup> Alex’s impression was that although he raised these issues with the school, nothing really changed.<sup>73</sup>
77. As he grew up, Jack experienced a loss of confidence, low self-esteem and self-harm. He has had violent outbursts, agoraphobia and an inability to attend school or associate or socialise with his peers.<sup>74</sup> Jack has not participated in any education since early high school.<sup>75</sup> He feels that his opportunities in life have been reduced because of his experiences in the education system.

## Quaden and Yarraka Bayles

78. Quaden Bayles is a First Nations child with disability undertaking his education at a public, mainstream, primary school in Queensland.<sup>76</sup> He was nine years old and in Year 4 when he gave evidence.
79. Quaden’s mother, Yarraka Bayles, is a First Nations woman. She works as a workshop facilitator and tour guide for a First Nations run and owned organisation in Brisbane.<sup>77</sup>
80. Ms Bayles gave evidence about Quaden’s experiences of bullying at his school.<sup>78</sup> Incidents included Quaden ‘being called names, and pushed on the ground, as well as being isolated and left out’.<sup>79</sup> Ms Bayles emphasised the impact of the bullying on Quaden, stating that ‘it got to the point where sometimes he was attempting suicide multiple times in a day’.<sup>80</sup>
81. Ms Bayles also gave evidence about the school’s response to the bullying.<sup>81</sup> Ms Bayles said that, in her opinion:

The school hasn’t done enough. My son’s life is on the line. I’m keen to make changes. I’m sick of sounding like a broken record about not enough being

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71 Exhibit 7-116, ‘Statement of ‘Alex’’, 24 February 2020, at [16].

72 Exhibit 7-116, ‘Statement of ‘Alex’’, 24 February 2020, at [16].

73 Exhibit 7-116, ‘Statement of ‘Alex’’, 24 February 2020, at [16].

74 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020; Exhibit 7-116, ‘Statement of ‘Alex’’, 24 February 2020.

75 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [63–69].

76 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [16], [19], [45], [52].

77 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [5–6].

78 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [88–100].

79 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [92–93].

80 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [94].

81 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [102–123].

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done ... they preach about anti-bullying, but nothing is in place ... they haven't communicated to me about what they have in place or any policies they have.<sup>82</sup>

82. Ms Bayles expressed her concern at the lack of culturally appropriate supports provided to Quaden at school.<sup>83</sup>
83. In a pre-recorded video, Quaden spoke about the changes he wants to see to make school a better place for children with disability. When asked what message he would like to give to children who do not understand how their comments can hurt him, Quaden's memorable reply was: 'Just don't be rude to kids who have disabilities, and just be kind and be nice.'<sup>84</sup>

## Maria Scharnke

84. At the time she gave evidence, Ms Scharnke was a 17 year old school student with disability undertaking Year 12 at St Francis College, an independent Catholic school in Queensland.<sup>85</sup>

85. Ms Scharnke explained that autism is a fundamental part of her identity.<sup>86</sup> She described her experiences of being neurodivergent:

My autism is a disability but it is not a detriment. It is a fundamental part of who I am both in the social sense, that is, my interactions with other people, with the community, with systems such as the government system, the health system, the education system, have all been impacted and shaped by the fact that I have a disability but in addition, autism is a neurodivergent or neurodevelopmental disorder, thus my brain has been shaped by autism, so the way I think is quite literally determined by my disability, and I am proud of this fact.<sup>87</sup>

86. Ms Scharnke gave evidence about her experiences at both mainstream and special/segregated schools, including of a lack of adjustments to support her learning, bullying, exclusionary discipline and use of restrictive practices.
87. Ms Scharnke told the Royal Commission about her parents' efforts to find a new school when the family relocated around 2009. She explained that, because her father is a Lutheran pastor, he contacted several Lutheran schools who were willing to enrol her despite being almost full.<sup>88</sup> However:

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82 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [103–104].

83 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [63], [77], [84].

84 Transcript, Quaden Bayles, 12 October 2020, P-42 [27–33].

85 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [3].

86 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [7].

87 Transcript, Maria Scharnke, Public hearing 7, 16 October 2020, P-385 [12–18].

88 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [43].

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when my father then informed them that I was disabled, the principals changed their minds and denied me enrolment. Their explanations were that the schools had a quota of special needs students in any given year level, and enrolling me would to [sic] be to go above their quota.<sup>89</sup>

88. Ms Scharnke recounted the difficulties she experienced obtaining adjustments to sit her Year 12 Australian Tertiary Admission Rank exams. She explained how her disability can impact her understanding of and approach to assessment tasks.<sup>90</sup> She shared her concerns about accessing tertiary education<sup>91</sup> and the long-term impacts of her school experiences.<sup>92</sup> She said her performance suffered because her teachers had low expectations of her. Ms Scharnke recalled a class teacher who was unsupportive and unhelpful who ‘caused me a great deal of trauma. I thought that I was unintelligent, as I only observed criticism of myself and my performance’.<sup>93</sup>

## ‘Sarah’ and ‘Kobe’

89. ‘Sarah’ gave evidence about the schooling experiences of her son ‘Kobe’,<sup>94</sup> who she described as having ‘serious and complex disability needs’.<sup>95</sup> At the time of the hearing, Kobe was 16 years old and not attending school. Kobe spoke about his school experiences through a pre-recorded audio statement.<sup>96</sup>
90. Sarah described Kobe as an ‘intelligent and highly aware child’<sup>97</sup> with low self-esteem because of his disabilities.<sup>98</sup> Kobe often says he wishes he ‘didn’t have autism’<sup>99</sup> and

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89 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [43].

90 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [72–85]; Transcript, Maria Scharnke, Public hearing 7, 16 October 2020, P-399 [1]–P-400 [36].

91 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [23].

92 Transcript, Maria Scharnke, Public hearing 7, 16 October 2020, P-389 [40]–P-390 [14].

93 Exhibit 7168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [25].

94 The names and any identifying information of Sarah and her son Kobe are the subject of a non-publication direction made by the Royal Commission (CTHDNP00051). Pursuant to a pseudonym direction made by the Royal Commission (CTHDNP00050), they are identified through the pseudonyms ‘Sarah’ and ‘Kobe’ for the purposes of Public hearing 7.

95 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [4].

96 Extracted at Transcript, Kobe, Public hearing 7, 14 October 2020, P-197 [25]–P-198 [3]; Transcript, Kobe, Public hearing 7, 14 October 2020, P-204 [5–29]; Transcript, Kobe, Public hearing 7, 14 October 2020, P-204 [42]–P-205 [16]; Transcript, Kobe, Public hearing 7, 14 October 2020, P-205 [24]–P-206 [12], Transcript, Kobe, Public hearing 7, 14 October 2020, P-214 [38]–P-215 [45]; Transcript, Kobe, Public hearing 7, 14 October 2020, P-217 [43]–P-218 [12]; Transcript, Kobe, Public hearing 7, 14 October 2020, P-218 [15–25].

97 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [15].

98 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [14].

99 Transcript, Sarah, Public hearing 7, 14 October 2020, P-189 [18–19].

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refers to himself as a ‘bad, bad boy’ whenever he has meltdowns.<sup>100</sup> Sarah explained that Kobe has ‘rigid thinking and poor communication skills, meaning he needs guidance to ensure he interprets verbal and non-verbal communications correctly, and to avoid challenging behaviour’.<sup>101</sup>

91. Sarah gave evidence about Kobe’s varied experiences during his time at three state schools.<sup>102</sup> Kobe attended School 1 for his primary and early middle school years, before moving to School 2 for Years 8 and 9. Kobe then briefly attended Year 10 at School 3, before withdrawing from schooling entirely. While Kobe had relatively positive experiences at Schools 1 and 3, Sarah’s evidence predominantly concerned Kobe’s experiences at School 2.
92. School 1 offered a ‘nurturing and supportive approach’<sup>103</sup> with ‘ongoing careful planning, supports and resourcing’.<sup>104</sup> This school allowed Kobe to develop a small friendship group and ‘develop positive relationships with his teachers’.<sup>105</sup> By contrast, at School 2, the principal ‘either did not understand or refused to understand Kobe’s needs’.<sup>106</sup> Kobe’s experiences at this school were ‘underpinned by a schoolwide lack of understanding of [Kobe’s] needs and how his behaviour can manifest when those needs aren’t catered for’.<sup>107</sup> Sarah, a state school teacher herself, spoke of her frustration at how hard she needed to work to get School 2 to understand and support her son’s needs.<sup>108</sup>
93. Sarah gave evidence about Kobe’s experiences of exclusionary discipline during his short 13 month enrolment at School 2. These included repeated suspensions, prolonged part-time enrolment and finally his expulsion from School 2 in early 2019.
94. Sarah expressed disappointment at Education Queensland’s handling of her complaint about Kobe’s experiences at School 2. When Sarah attempted to have Kobe’s 12 month exclusion overturned, she felt that departmental officials ‘never really acknowledged Kobe’s experience and the impact it had’.<sup>109</sup>

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100 Transcript, Sarah, Public hearing 7, 14 October 2020, P-189 [20–21].

101 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [10].

102 The names of the state schools Kobe attended are the subject of a non-publication direction made by the Royal Commission (CTHDNP00051). Accordingly, they are referred to as ‘School 1’, ‘School 2’ and ‘School 3’.

103 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [37].

104 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [38].

105 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [41–42].

106 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [79].

107 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [63].

108 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [5], [67].

109 Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [103].

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95. Sarah also felt that the Regional Director, in affirming Kobe's exclusion, disregarded 'the fact that a lack of support was provided for Kobe and focused on Kobe's behaviour as the reason for upholding the exclusion'.<sup>110</sup>
96. In Sarah's view, School 2 'did not provide Kobe with the level of support he required at any time during his enrolment',<sup>111</sup> despite both School 1 and School 2 operating within the same school system. The key difference between them appears to have been the attitude, understanding and approach of the staff.

## 'Leif'

97. 'Leif',<sup>112</sup> a young person with disability, provided a written statement to the Royal Commission.<sup>113</sup> Leif did not wish to give oral evidence at the hearing. Leif uses gender neutral pronouns.
98. Leif said that their primary and high schools did not provide appropriate adjustments to support their learning and mental health and that they experienced bullying by other students and mistreatment by school staff. Leif considered that, because of their school experiences, they did not pursue and obtain an Overall Position<sup>114</sup> tertiary entrance rank and as a result have limited pathways to employment and higher education.<sup>115</sup> Leif described their school experiences overall as 'incredibly upsetting and stressful'.<sup>116</sup>
99. Leif said that their high school principal imposed a 'communication plan' banning their mother from communicating with school staff other than through emails that would be answered once a week by the Special Education Unit (SEU) case manager.<sup>117</sup> Leif's mother lodged complaints with the Department of Education and the State Ombudsman about the 'communication plan'.<sup>118</sup> Lief's mother also lodged many complaints with the school.<sup>119</sup> However, their mother felt that the complaints were not addressed.<sup>120</sup>

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110 Exhibit 7-089, 'Statement of 'Sarah'', 23 July 2020, at [107].

111 Exhibit 7-089, 'Statement of 'Sarah'', 23 July 2020, at [44].

112 The name and any identifying information of Leif, as well as the names of the state schools they attended, is the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051). Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they were referred to as 'Leif'.

113 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020.

114 Prior to 2020, the Overall Position was the primary pathway for tertiary entrance for Year 12 school leavers in Queensland. Since 2020, the OP has been replaced by the Australian Tertiary Admission Rank.

115 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [8].

116 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [101–102].

117 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [100].

118 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [100].

119 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [100].

120 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [100].

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100. One of the difficulties faced by Leif was their school's perception that they could not achieve academically. Leif's evidence was that the head of the SEU treated them as 'delusional' for aiming to go to university.<sup>121</sup> Rather than being encouraged to undertake classes that could lead to a university admission, Leif felt pressured to take a non-tertiary stream of high school classes and to seek 'other alternatives' to enter university such as a TAFE course:<sup>122</sup>

I felt that the school trivialised my challenges by assuming that I was unable to understand the content of classes, not realising that what I often required was help with processing the information.<sup>123</sup>

101. Leif considered they faced attitudinal barriers because teachers acted on the misconception that students with disability are inherently limited in their capacity to learn because of their disability.<sup>124</sup>

## 'Alice'

102. 'Alice' is a student with disability who shared her personal experiences with the Royal Commission.<sup>125</sup> A video of Alice speaking at the National Youth Disability Summit was played and admitted into evidence.<sup>126</sup> Alice explained the problem with assuming that all students with disability should be treated in the same way:

What I'm trying to get across is that clearly with the system as it currently is, it is wrong to call the disability education sector truly inclusive. We're all still, [seen] as one homogeneous group, held back by the one-size-fits-all ideology. That is, we all have the same abilities and interests. It is this approach that's being perpetuated in our schools and our workplaces. This is the approach that we need to dismantle if we truly want to call our education inclusive.<sup>127</sup>

103. Alice highlighted the importance of tailoring supports and adjustments to the needs of each student:

By year nine, I had really started to love academic pursuits, and my success had seen this become an element of my identity for which I was, and still am, really proud. At this stage in the classroom, I did just need a teacher aide to

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121 Exhibit 7-199, 'Statement of 'Leif', 13 March 2020, at [89].

122 Exhibit 7-199, 'Statement of 'Leif', 13 March 2020, at [90].

123 Exhibit 7-199, 'Statement of 'Leif', 13 March 2020, at [33].

124 Exhibit 7-199, 'Statement of 'Leif', 13 March 2020, at [33].

125 Pursuant to a pseudonym direction made by the Royal Commission (CTH DNP 00050), she was identified as 'Alice' for the purpose of Public hearing 7.

126 Exhibit 709, IND.0056.0001.0001.

127 Transcript, 'Alice', Public hearing 7, 12 October 2020, P73 [31–36].

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be my hands. What I got was a well-intentioned person whose lack of technical expertise, particularly with word processing, was the cause of significant distress, not just for me but for her.<sup>128</sup>

## ‘Sam’ and ‘Amy’

104. ‘Amy’ gave evidence about the education of her 10-year-old son ‘Sam’.<sup>129</sup> A pre-recorded video of Sam talking about school<sup>130</sup> was also played at the hearing.<sup>131</sup>
105. Amy told the Royal Commission that Sam ‘loves getting outside and going horse riding and surfing’ and that he loves life, people and animals.<sup>132</sup> She explained that Sam has been diagnosed with a number of conditions, including autism spectrum disorder, a sensory processing disorder and generalised anxiety disorder of childhood.<sup>133</sup> Amy told the Royal Commission that Sam can struggle to control his emotions<sup>134</sup> if he is having difficulty communicating his physical needs,<sup>135</sup> but she and her husband use a number of strategies to help calm him down when needed.<sup>136</sup>
106. Detailed information about Sam’s case is set out in Part 4 of this Report.

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128 Transcript, ‘Alice’, Public hearing 7, 12 October 2020, P55 [26–30].

129 The names and any identifying information of Amy and Sam are the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051). Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they were referred to as ‘Amy’ and ‘Sam’.

130 The name of the government school attended by Sam is the subject of a nonpublication direction that was made by the Royal Commission (CTH-DNP-00053).

131 Transcript, Amy, Public hearing 7, 13 October 2020, P-128 [28–34].

132 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [9].

133 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [13–14].

134 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [15].

135 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [17].

136 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [18].

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## Part 4: Sam's case

107. Public hearing 7 closely examined Sam's case. In this part of the Report, we make findings on the basis of Sam's experiences, particularly in relation to the use and impact of exclusionary discipline on very young students with disability.
108. Exclusionary discipline, as defined earlier in this Report, is the application of a consequence that results in the withdrawal of educational provision to children,<sup>137</sup> often involving the removal of a student from the classroom or school for what is perceived as negative behaviour. When a child is excluded for their behaviour, the expectation is that the period of suspension will allow time for reflection, act as a deterrent, and encourage compliant behaviour in future. Sam's experience illustrates the flaws in this approach, particularly for students with disability.
109. In this part we focus on the specific issues that arose in Sam's case. However it is important to note that the barriers Sam experienced also have the potential to impact other students with disability in NSW. Some of the broader issues are considered in Part 5 of this Report.

### Sam's experiences in education

110. Before Sam started Kindergarten, his parents provided information to his school about the strategies that had been used successfully during his time at preschool.<sup>138</sup> Sam's speech pathologist and occupational therapist also collaborated with the school before Sam started to suggest supports that would assist Sam.<sup>139</sup>
111. Within three weeks of Sam beginning Kindergarten at his NSW public school in 2016, his mother, Amy, received a 'formal caution', warning of Sam's possible suspension.<sup>140</sup> The letter was formal in its tone and stated that 'your son ... has been behaving inappropriately' and 'he has breached the school's discipline code by: aggressive behaviour'.<sup>141</sup> The letter went on to say that if the behaviour continued, Sam might be suspended in accordance with the NSW Department's Suspension and Exclusion of School Students—Procedures 2011 (as in force in 2016) (NSW Suspension and Expulsion Procedures).<sup>142</sup>

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137 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [38(a)].

138 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020, at [31]; Exhibit 712.9, NSW.0029.0005.0407; Exhibit 7-12.8, NSW.0029.0005.0408.

139 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020, at [32].

140 Exhibit 7-12.18, NSW.0029.0001.5751.

141 Exhibit 7-12.18, NSW.0029.0001.5751.

142 Exhibit 7-86.6, NSW.0029.0001.2767.

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112. The letter also stated that ‘these matters have been discussed at length with [Sam] and he knows what is expected in future’.<sup>143</sup> Amy’s evidence was that when she received that letter:

I couldn’t believe it, to be honest. I couldn’t believe that a 5year old ... at kindergarten that he had just started at. I was absolutely floored. For any kindergarten kid, I would think that’s not a way to say welcome to the school, let alone a kid with additional needs who struggles.<sup>144</sup>

113. Two days into his second term of Kindergarten, on 28 April 2016, Sam was suspended for two days. The letter to Sam’s parents identified the reason for the suspension as ‘aggressive behaviour’ because Sam ‘deliberately kick[ed] his teacher in the knee’.<sup>145</sup> The letter stated:

[s]uspension allows time for the issues that have led to this action to be explored and resolved. It also provides time for the school to plan appropriate support for [Sam] to assist with a successful and safe return to school.<sup>146</sup>

114. On 7 June 2016, Sam was suspended for a further two days, again for ‘aggressive behaviour’.<sup>147</sup> Sam was suspended for a third time for ‘aggressive behaviour’ on 5 August 2016, for two days.<sup>148</sup>

115. On 22 August 2016, during Term 3, Sam was suspended for a fourth time for ‘aggressive behaviour’. This time the suspension was for 20 days,<sup>149</sup> which meant that Sam did not return to school for the remaining half of Term 3.<sup>150</sup> The effect on Sam and the family was profound. Amy said:

our lives were suddenly thrown into turmoil because we weren’t prepared for having our son at home for 20 days. He was meant to be schooling. And so we had to quickly try to organise work and leave and our lives around being able to support him being at home now.<sup>151</sup>

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143 Exhibit 7-12.18, NSW.0029.0001.5751.

144 Transcript, Amy, Public hearing 7, 13 October 2020, P-105 [37].

145 Exhibit 7-12.21, IND.0040.0001.0058.

146 Exhibit 7-12.21, IND.0040.0001.0058.

147 Exhibit 7-12.24, IND.0040.0001.0068.

148 Exhibit 7-12.30, IND.0040.0001.0090.

149 Exhibit 7-12.33, IND.0040.0001.0113.

150 Transcript, Amy, Public hearing 7, 13 October 2020, P-119 [37–46].

151 Transcript, Amy, Public hearing 7, 13 October 2020, P-119 [9–25].

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116. Less than two weeks after the commencement of the next school year, on 6 February 2017, Sam was suspended for two days for ‘aggressive behaviour’.<sup>152</sup> On 28 March 2017, another suspension followed.<sup>153</sup> Part way into Term 2, on 16 May 2017, Sam was again suspended for 20 days.<sup>154</sup>

117. Amy said at the time she felt:

Devastated. Devastated because of the reason for it. It didn’t need to happen. He had quite clear escalation signs that had been noted in the risk management, the behaviour management plans ...<sup>155</sup>

118. Following the second 20 day suspension, Sam did not return to school and was home schooled by his parents.<sup>156</sup> Amy said that Sam was significantly traumatised by his school experiences.<sup>157</sup>

119. Sam was suspended a total of seven times in his first 18 months at school. He received his first suspension when he was just five years old, and spent a total of 50 days out of school due to suspensions.

120. Amy stated that Sam ‘recently told us that school made him really sad, that he did not want to be there and he was bullied’:<sup>158</sup>

Although things have improved since we have withdrawn [Sam] from the school, that period in his life continues to cause him significant distress. For example, until 6 months ago, he became incredibly emotional when we drove past the school, and he becomes extremely anxious when he sees kids in the school’s uniform. This has improved but he still occasionally reports feeling angry sometimes when he sees kids in uniform, and feels sick when he goes past the school.<sup>159</sup>

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152 Exhibit 7-12.53, IND.0040.0001.0181.

153 Exhibit 7-12.62, IND.0040.0001.0052.

154 Exhibit 7-12.64, IND.0040.0001.0235.

155 Transcript, Amy, Public hearing 7, 13 October 2020, P-130 [12–16].

156 Transcript, Amy, Public hearing 7, 13 October 2020, P-130 [43]–P-131 [10].

157 Transcript, Amy, Public hearing 7, 13 October 2020, P-131 [21].

158 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [137].

159 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [138].

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## Appeals against suspension decisions

121. Sam's parents made a number of appeals against the suspensions applied by his school. They challenged Sam's second suspension in a letter to the school principal.<sup>160</sup>
122. They wrote a letter dated 8 August 2016 to Mr Andrew Eastcott, Director, Public Schools, appealing Sam's third suspension.<sup>161</sup> In a letter received by Sam's parents on 22 August 2016,<sup>162</sup> Mr Eastcott advised that Sam's suspension was being upheld.<sup>163</sup>
123. Sam's parents appealed Mr Eastcott's decision by letter dated 22 August 2016 to Mr Frank Potter, Executive Director, School Performance.<sup>164</sup>
124. On 16 November 2016, approximately three months after the appeal was lodged (and well after the suspension had concluded), Mr Potter informed Sam's parents that the decision to suspend Sam for 20 days on 22 August 2016 was 'correct', and the 5 August 2016 suspension was 'reasonable and consistent'.<sup>165</sup> He therefore concurred with Mr Eastcott's decision to uphold that suspension.<sup>166</sup>
125. The evidence at Public hearing 7 highlighted deficiencies in the NSW Department's handling of the appeals made by Sam's parents.
126. The first was a failure by Mr Potter, in making a decision to uphold Mr Eastcott's decision to uphold Sam's suspension, to consider whether the necessary adjustments had been provided to Sam prior to his suspension.
127. In appealing Sam's suspension to Mr Potter, his parents argued that the adjustments listed in the letter from Mr Eastcott dated 17 August 2016 had been implemented by the school inconsistently or not at all.<sup>167</sup> They considered that Sam's age, individual needs, disability and developmental level had not been taken into account when suspending him.<sup>168</sup>

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160 Exhibit 7-12.25, IND.0040.0001.0070.

161 Exhibit 7-12.31, IND.0040.0001.0094.

162 Exhibit 7-12.35, IND.0040.0001.0115.

163 Exhibit 7-12.32, IND.0040.0001.0099.

164 Exhibit 7-12.35, IND.0040.0001.0115.

165 Exhibit 7-12.49, IND.0040.0001.0150.

166 Exhibit 7-12.49, IND.0040.0001.0150.

167 Exhibit 7-12.35, IND.0040.0001.0115.

168 Exhibit 7-12.35, IND.0040.0001.0115.

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128. Mr Potter agreed that, in accordance with statutory requirements and as outlined in paragraph 4.6 of the *NSW Suspension and Expulsion Procedures*,<sup>169</sup> a principal must provide reasonable adjustments to support students with disability to access and participate in education on the same basis as other students.<sup>170</sup> He agreed that these reasonable adjustments must be in place before a principal can properly suspend a student with disability.<sup>171</sup>

129. Mr Potter further conceded that he did not give consideration as to whether the necessary adjustments had in fact been put in place prior to each suspension,<sup>172</sup> but that he ought to have done so.<sup>173</sup> Mr Potter also told the Royal Commission he was not aware of Sam's previous suspensions when he made the decision in respect of his third suspension.<sup>174</sup>

130. Another issue was the time taken to resolve the appeal. Mr Potter accepted that his management of Sam's suspension appeal 'took longer than it should have'.<sup>175</sup> Mr Potter stated that there was an indicative timeframe for resolving the appeal:

I should have been more vigilant in terms of keeping an eye on that timeframe, though I understand that there were difficulties in collecting all the information from all the people that needed to be referred to.<sup>176</sup>

131. NSW conceded that the process followed in the 16 November 2016 appeal decision was defective.<sup>177</sup> It also accepted in principle that any person determining any appeal against a suspension should:

- a provide the parents/guardians with the opportunity to respond to the description of the events relied upon for the suspension
- b consider the student's suspension history
- c consider whether appropriate supports and adjustments were in place prior to the suspension
- d consider whether supports and adjustments could be provided as an alternative to imposing a suspension.<sup>178</sup>

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169 Exhibit 7-86.6, NSW.0029.0001.2767 as in operation at the time of Sam's suspension.

170 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-139 [20–42].

171 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-142 [46]–P-143 [6].

172 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-154 [47]–P-155 [16].

173 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-154 [47]–P-155 [16].

174 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-173 [46]–P-174 [2].

175 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-137 [39–43].

176 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-137 [39–43].

177 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [62].

178 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [73].

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132. Sam's case highlighted the challenges parents and supporters of students with disability face in appealing suspension decisions. Sam's mother Amy described her experiences with the appeals process as feeling like she was 'stuck in a loop' and spoke of the need for access to 'independent guidance and support'.<sup>179</sup>

You're reaching out for help, and begging someone to help and look at it and support, and you get referred back to the situation that you're in already. So we had already been through those processes, we had already had those discussions, we had hit a brick wall.<sup>180</sup>

133. Mr Potter acknowledged that after an appeal is refused by the Department, parents have limited further options for independent review of decisions, those being external bodies such as the Australian Human Rights Commission, the courts or the NSW Ombudsman.<sup>181</sup>

## Classification of restraint as an adjustment

134. A key element of Sam's case was the classification of 'restraint' as one of the adjustments provided to Sam.
135. In upholding the school's decision to suspend Sam,<sup>182</sup> Mr Eastcott listed the adjustments which he had been told the school provided to Sam and concluded that 'these ... adjustments clearly indicate that the school is considering [Sam's] disability and individual circumstances and provided reasonable adjustments'.<sup>183</sup>
136. Mr Eastcott's letter listed 45 'significant and reasonable adjustments' that the school claimed they had provided to Sam including:

Restrain [Sam] for his safety and for the safety of others if it is deemed required using 'reasonable force'.

Suspend [Sam] from school ...<sup>184</sup>

137. Mr Potter accepted that restraining Sam was not a reasonable adjustment.<sup>185</sup> NSW agreed that this was the case in their written and oral submissions,<sup>186</sup> but also advised

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179 Transcript, Amy, Public hearing 7, 13 October 2020, P-125 [14–17].

180 Transcript, Amy, Public hearing 7, 13 October 2020, P-125 [34–38].

181 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-142 [21–29].

182 Exhibit 7-12.32, IND.0040.0001.0099.

183 Exhibit 7-12.32, IND.0040.0001.0099.

184 Exhibit 7-12.32, IND.0040.0001.0099.

185 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-171 [1–4].

186 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [54]; Transcript, Gail Furness SC, Public hearing 7, 7 May 2021, P-519 [12].

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the Royal Commission that restraints may constitute a reasonable adjustment in some circumstances.<sup>187</sup> This issue is explored further in Part 5 of this Report.

## Impact of suspension policies on students with disability

138. Section 22 of the *Disability Discrimination Act 1992* (Cth) (*DDA*) makes it unlawful for an ‘educational authority’ to discriminate against a student on the basis of the student’s disability, including:

(a) by refusing or failing to accept the person’s application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.<sup>188</sup>

139. Discrimination includes ‘indirect discrimination’, which is defined as follows:

For the purposes of this Act a person (‘discriminator’) discriminates against another person (‘aggrieved person’) on the ground of a disability of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition:

(a) with which a substantially higher proportion of persons without the disability comply or are able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the aggrieved person does not or is not able to comply.<sup>189</sup>

140. Sam’s case highlighted the potential for the *NSW Suspension and Expulsion Procedures* to operate in such a way that it disproportionately and adversely affects students with disability.

141. According to Dr Lee Sturgeon, the clinical psychologist who treated Sam for a number of years and has extensive experience working with children with disability, the behaviours which were the trigger for Sam’s multiple suspensions were directly linked to his disability. Dr Sturgeon stated that Sam:

is a child who is highly intelligent, but with slow processing capabilities. This means that he can take some time to process instructions. These issues can

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187 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [37].

188 *Disability Discrimination Act 1992* (Cth), s 22(1).

189 *Disability Discrimination Act 1992* (Cth), s 6.

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be exacerbated by sensory processing differences that arise from [Sam's] ASD, leading to him becoming overwhelmed and anxious. His overwhelmed and anxious state can often lead to [Sam] externalizing behaviours – sometimes manifesting as violence or failing to act in accordance with directions. Matters like this need to be taken into account in assessing and responding to [Sam's] behaviour.<sup>190</sup>

142. However, these factors were not able to be taken into account in the review of Sam's suspension. Mr Potter explained that, under the *NSW Suspension and Expulsion Procedures*, a student's intention was not a relevant factor; any student who was physically violent had to be suspended and a principal had no discretion in the matter.<sup>191</sup> Mr Potter accepted that the policy could disproportionately impact upon students with disability and that it is inappropriate for the policy to operate in this way.<sup>192</sup>
143. NSW accepted that the *NSW Suspension and Expulsion Procedures* were applied literally and without due regard for Sam's disabilities in each instance. NSW also accepted that this approach had the potential to disproportionately affect students with disability.<sup>193</sup>
144. It must be noted that NSW is currently undertaking reform in relation to its approach to addressing student behaviour. The final version of the *NSW Student Behaviour Strategy* was released in March 2021. Mr Potter said that the new *Student Behaviour Strategy* allows for greater discretion so that principals are able to choose responses to the behaviour other than suspension.<sup>194</sup>
145. That new strategy also states that the suspension rates for vulnerable students, including students with disability and First Nations students, are too high.<sup>195</sup>

## Effectiveness of suspensions

146. The evidence at Public hearing 7 also raised questions about the effectiveness of suspensions as a strategy for addressing the behaviour of students with disability.
147. In appealing Sam's suspension to Mr Potter, his parents argued that the ongoing suspensions were not resolving the issues and were not of any benefit to Sam's educational and general wellbeing.<sup>196</sup>

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190 Exhibit 7-204, Statement of Lee Anthony Sturgeon, 28 September 2020, at [38].

191 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-155 [24–26].

192 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-158 [47]–P-159 [15].

193 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [64].

194 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-155 [24–36].

195 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [64].

196 Exhibit 7-12.35, IND.0040.0001.0115.

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148. NSW's submissions accept that the suspensions of 20 days' duration were inappropriate in the circumstances.<sup>197</sup> The NSW Department told the Royal Commission it is considering new policies which would limit the use of suspensions when dealing with young children.<sup>198</sup>
149. However, NSW also sought to link Sam's suspensions to its duty of care to staff and students and obligations under the *Work Health and Safety Act 2011 (NSW)*,<sup>199</sup> emphasising that Sam's school was obliged to have regard to the safety of other students, Sam and staff.<sup>200</sup>
150. As suspensions were an automatic consequence of any physical violence under the *NSW Suspension and Expulsion Procedures*, regardless of whether staff or students were in genuine need of protection,<sup>201</sup> it cannot be said that the suspensions were necessary to protect staff or students from harm.
151. It is also evident that the use of suspensions did not support the development of positive behaviour upon Sam's re-entry to the classroom or address the underlying causes of his perceived 'aggressive' behaviour.

## Denial of access to quality, inclusive education

152. The repeated suspension of Sam was effectively a denial of his right to access quality, inclusive education.
153. NSW submitted Sam had not experienced 'educational neglect', as defined in Counsel Assisting's Written Submissions, because adjustments were made for him.<sup>202</sup> As previously noted, Sam's parents contend that any reasonable adjustments the school had said it would provide to Sam were implemented inconsistently or not at all.<sup>203</sup>
154. In total, Sam was excluded from school for over 50 days in his first year and a half of school. This severely disrupted his educational development at a critical point and denied him access to quality, inclusive education.

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197 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [60].

198 Exhibit 786.19, NSW.0029.0018.0032; Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [60].

199 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [68].

200 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [30], [56], [68].

201 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-153 [26–28].

202 Transcript, Gail Furness SC, Public hearing 7, 7 May 2021, P-519 [29]–P-520 [2].

203 Exhibit 7-12.35, IND.0040.0001.0115.

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## Findings

155. The Royal Commission makes the following findings in respect of Sam's case:

### Sam's case Finding 1

The process followed by the NSW Department in its 16 November 2016 appeal decision in regards to Sam's suspension was defective because the decision-maker:

- was not aware of the number of suspensions to which Sam had been subjected since the start of his school life;<sup>204</sup>
- did not make available to Amy the response of the school disputing the version of events that she had put forward, even though they could have done so;<sup>205</sup>
- did not consider whether necessary adjustments had been put in place prior to each suspension; and<sup>206</sup>
- paid insufficient attention to the indicative timeframe for making the decision.<sup>207</sup>

### Sam's case Finding 2

Sam's school inappropriately identified 'restraint' as a reasonable adjustment provided to Sam.

### Sam's case Finding 3

The suspensions of 20 days' duration were inappropriate having regard to Sam's age, disability, stage of education and other needs.<sup>208</sup>

### Sam's case Finding 4

The NSW Suspension and Expulsion Procedures were applied to Sam rigidly and without due regard in each instance to his disability. The procedures applied in this way had the potential to disproportionately impact students with disability.

### Sam's case Finding 5

Sam was inappropriately subject to repeated suspensions from school, which prevented him from receiving a safe, quality and inclusive education.

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204 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-174 [2–6].

205 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-174 [27–29].

206 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-154 [47]–P-155 [16].

207 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-137 [39–43].

208 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [60].

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## Part 5: Analysis of barriers to safe, quality, inclusive education

156. The evidence in Public hearing 7 identifies significant barriers experienced by students with disability in accessing safe, quality and inclusive education in mainstream settings. While the examination of these issues was mainly confined to NSW and Queensland, information held by the Royal Commission suggests these barriers are not limited to those jurisdictions.
157. Barriers to accessing education begin from the moment enrolment is first sought, with students with disability being denied or discouraged from enrolling in mainstream schools.<sup>209</sup>
158. Further, information presented to the Royal Commission suggests that once they are in school, students with disability may be more likely to be bullied by their peers. They also experience challenges in accessing the reasonable adjustments they need to participate in education.<sup>210</sup>
159. For several witnesses at Public hearing 7, the nature of their disability meant that they would sometimes display what are known as ‘behaviours of concern’.<sup>211</sup> Students with disability who display behaviours of concern often experience inappropriate responses such as use of exclusionary discipline, restrictive practices and being placed on part-time enrolment.<sup>212</sup>
160. The cumulative impacts of these experiences in education can be significant on the mental health, wellbeing and future outcomes for students with disability,<sup>213</sup> likely

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209 For example Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive Education in Queensland—Preliminary Inquiry*, October 2020, [212–215]; Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [60].

210 For example Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [65–66]; Exhibit 7-100, ‘Statement of ‘Leif’’, 13 March 2020, at [33]; Exhibit 789, ‘Statement of ‘Sarah’’, 23 July 2020, at [45–49].

211 At Public Hearing 6, Professor Leanne Dowse and Dr Catherine Franklin used the definition of ‘behaviours of concern’ adopted in 2007 by the Royal College of Psychiatrists, British Psychological Society and Royal College of Speech and Language Therapists. It is behaviour: ‘of such an intensity, frequency or duration as to threaten the quality of life and/or the physical safety of the individual or others and is likely to lead to responses that are restrictive, aversive or result in exclusion.’ See Exhibit 6-69, The British Psychological Society and Royal College of Psychiatrists ‘Challenging behaviour: a unified approach - update’, p 8; Exhibit 6-14, ‘Statement of Professor Leanne Dowse’, 7 September 2020, at [14]; Exhibit 6-2, ‘Statement of Dr Catherine Franklin’, 10 September 2020, at [25].

212 For example Transcript, Deborah Wilson, Public hearing 2, 4 November 2019, P-47, [32–34]; Transcript, AAC, Public hearing 2, 5 November 2019, P-94 [13–15]; Exhibit 7-089, ‘Statement of ‘Sarah’’, 23 July 2020, at [49]; Exhibit 789, ‘Statement of ‘Sarah’’, 23 July 2020, at [89]; Exhibit 7-199, ‘Statement of ‘Leif’’, 13 March 2020, at [73]; Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [26–27].

213 For example Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [30]; Exhibit 7-100, ‘Statement of ‘Leif’’, 13 March 2020, at [94]; Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [59]; Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [100].

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contributing to low educational attainment<sup>214</sup> and employment among people with disability in Australia.<sup>215</sup>

161. Public hearing 7 reinforced what was learnt about the exclusion of students with disability at Public hearing 2. From the evidence at both hearings, we have identified the following common barriers to inclusive education for students with disability:
- **Attitudes:** Attitudes about disability contribute significantly to how people with disability are treated in the community, including in education settings. Negative stereotypes are a driver of bullying and misconceptions about the capabilities of students with disability, which can deny them the opportunity to realise their full potential.
  - **Workforce capacity:** Educators with a nuanced understanding of disability and how to support students with disability are critical to inclusive education. Existing Initial Teacher Education<sup>216</sup> and continuing professional development programs are not equipping educators with the skills and knowledge to facilitate the inclusion of students with disability.
  - **Oversight and regulation:** Existing laws and policies governing enrolment of students with disability, reasonable adjustments, the use of exclusionary discipline and restraints do not impose sufficient oversight of the practices employed in schools. As a consequence it can be difficult to hold educators accountable for their decisions and ensure they meet the obligations set out under the *DDA*.
  - **Data:** Governments do not routinely collect and report publicly on data which would help them better understand and address violence, abuse, neglect and exclusion experienced by students with disability in education.
  - **Funding:** Funding for reasonable adjustments should be an enabler of participation for students with disability. However, funding models can create barriers to participation if funding is perceived as a pre-requisite for the provision of adjustments or where the provision of funding is reliant on specific medical diagnoses or categories of disability.

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214 Australian Institute of Health and Welfare, 2020, *People with a disability in Australia: in brief – Education*.

215 Australian Bureau of Statistics, 2018, *Disability, Aging and Carers, Summary of Findings*, Australia, ABS cat No. 44300DO010, Table 9.3.

216 In order to register as a teacher in Australia, a person must complete 'at least four years of higher education (full-time or equivalent) study, including an initial teacher education program accredited in Australia, leading to the achievement of a recognised qualification; or an overseas qualification assessed as equivalent.' Australian Institute for Teaching and School Leadership, *Framework for Teacher Registration in Australia*, 2011, p 8.

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## Attitudes

162. The Royal Commission is considering the impact of discriminatory attitudes, assumptions and biases toward people with disability within the Australian community, and how these attitudes may act as drivers of violence, abuse, neglect and exploitation of people with disability.<sup>217</sup>
163. We have received many submissions on the critical role of schools and education in shaping attitudes towards people with disability. Attitudes are shaped both through the formal curriculum and by school leaders and teachers in their treatment of students with disability.<sup>218</sup>
164. We heard evidence at Public hearing 7 of the negative attitudes towards students with disability in education settings by teachers and other students, with witnesses describing the prejudice and discrimination they experienced or witnessed.
165. Mary Sayers, on behalf of Children and Young People Australia (CYDA), summarised the nature and impact of attitudes towards students with disability, who are seen as ‘too hard to educate, a burden on nondisabled students, or better off when they’re only educated with other disabled students in special settings away from the mainstream’. These attitudes influence the treatment of students with disability by teachers and fellow students.<sup>219</sup>

## Attitudes held by educators

166. Past reports and inquiries have highlighted the significant, detrimental impact of negative attitudes of educators on the experiences of students with disability.<sup>220</sup>
167. In the *Access to real learning report*, the Senate Committee noted its ‘shock and sadness’ at ‘the evidence provided of schools failing to recognise their responsibilities to educate all children’, and disappointment at ‘the underlying assumption of some that students with disability do not require or deserve to have their future life, especially career prospects, taken seriously’.<sup>221</sup>

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217 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Rights and Attitudes issues paper*, April 2020.

218 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Rights and Attitudes issues paper*, April 2021, page 5.

219 Transcript, Mary Sayers, Public hearing 7, 12 October 2020, P-57 [24–29].

220 For example Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p 30 [2.96]; Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review, Final Report*, 2020, p 28; Urbis for the Australian Department of Education, *2015 Review of the Disability Standards for Education 2005, Final Report*, 17 July 2015, p v.

221 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p 30 [2.79].

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168. The Senate Committee found that school culture was a ‘key determinant in the quality of education students with disability receive’. It found that ‘[f]or many students, the difference between positive and negative educational experiences could be traced directly to the extent to which individual principals and teachers understood the importance of providing real educational experiences for all the students in the school or class, including those with disability’.<sup>222</sup>

169. Successive reviews of the *Disability Standards for Education (DSE)* have reported concerns about a ‘culture of low expectations’ of students with disability as a key theme of stakeholder consultations and submissions, noting the limited ability of the *DSE* to address these negative attitudes.<sup>223</sup>

170. Evidence at Public hearing 7 illustrated the direct link between educators’ negative attitudes about disability and the exclusion of students with disability from education. Dr Kate de Bruin spoke about her research, which identified:

that there remain misconceptions about the ability of students, as if students’ capacity to learn is somehow predetermined, and their ability to achieve is fixed... This resulted in low expectations for the students with disabilities in their classroom and created an attitudinal barrier regarding their adoption of effective techniques ... Or, in fact, engaging in implementing reasonable adjustments.<sup>224</sup>

171. This was echoed in Leif’s evidence. Leif described how schools’ assumptions about their abilities directly affected their ability to access the adjustments they needed to participate:

I felt that the school trivialised my challenges by assuming that I was unable to understand the content of classes, not realising that what I often required was help with processing the information.<sup>225</sup>

172. Amy described the positive impact that attitudes could have on children with disability in respect of her son Sam’s experiences in a preschool where he was seen as a child with ‘real strengths’:

Sam wasn’t seen as being a naughty kid when he absconded ... He was seen as being clever and so, you know, they almost like celebrated with me sort of saying, ‘Gosh, he’s so clever, he keeps us on our toes and wow, we have to keep up with

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222 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p 30 [2.79].

223 Urbis for the Australian Department of Education, *2015 Review of the Disability Standards for Education 2005*, Final Report, 17 July 2015, p v; Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, p 29–30.

224 Exhibit 7-113, ‘Statement of Kate de Bruin’, 28 September 2020, at [131].

225 Exhibit 7-100, ‘Statement of ‘Leif’’, 13 March 2020, at [33].

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him all the time.’ But it was never, ‘Oh, your child ran out the gate and that’s not okay, you then need to do X, Y or Z’ or ‘We had to drag him back in’.<sup>226</sup>

173. Sharon described how a succession of schools refused her son Jack enrolment on the basis of his disability, highlighting the direct relationship between discriminatory attitudes and access to education:

I investigated a lot of different options for high school. I spoke to local private schools but they told me that they just ‘don’t take children like Jack’ ... I also rang a tutoring company in Townsville to see if they could help Jack and they said they wouldn’t take him on because he might interrupt the other kids if he made noise. I told them that all kids can be disruptive sometimes and it wasn’t fair to not take him because of his Tourette’s. It didn’t matter – they just said ‘sorry, we can’t help you’ and they wouldn’t tutor Jack.<sup>227</sup>

## Bullying

174. Attitudes are a key factor contributing to bullying experienced by students with disability. While past inquiries have noted with concern the high rates of bullying of students with disability, most have not considered the issues in detail.
175. Bullying is, however, comprehensively considered in the 2012 report by the Victorian Equal Opportunity and Human Rights Commission, *Held back: The experiences of students with disability in Victorian schools*. The report described bullying as a ‘significant and widespread’<sup>228</sup> problem for students with disability and noted the need for disability-specific anti-bullying interventions.<sup>229</sup>
176. Most lived experience witnesses at Public hearing 7 spoke about being bullied by their peers in education settings.<sup>230</sup> In many of these examples, students were targeted by bullies because of their disability.
177. Quaden’s mother, Ms Bayles,<sup>231</sup> said that Quaden had experienced regular and severe bullying by other students because of his disability. She spoke of him being called ‘midget’, being pushed to the ground, students laughing at him and leaving him out of recreational activities.<sup>232</sup>

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226 Transcript, ‘Amy’, Public hearing 7, 13 October 2020, P-100 [42–47], P-101 [1].

227 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [60].

228 Victorian Equal Opportunity and Human Rights Commission, *Held back: The experiences of students with disability in Victorian schools report*, September 2021, 72.

229 Victorian Equal Opportunity and Human Rights Commission, *Held back: The experiences of students with disability in Victorian schools report*, September 2021, 79.

230 Exhibit 7-08, ‘Statement of Cecile Elder’, 28 September 2020, at [64], [138].

231 A brief summary of the evidence of Yarraka and Quaden Bayles is at [78– 83] above.

232 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [92], [98].

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178. Sharon gave evidence of Jack’s experience of bullying which started in Year 5. Jack was prescribed an anti-psychotic medication which stopped his tic but had a side-effect of rapid weight gain.<sup>233</sup> It was around this time, after the weight gain, that children at primary school began bullying Jack.<sup>234</sup> This coupled with his already heightened anxiety, led Jack to ‘become fearful of kids his own age’.<sup>235</sup> Sharon explained that Jack ‘got it into his head that ... apart from them thinking he was a “freak” already because of his Tourette’s, he was now a “fat freak”’.<sup>236</sup> During the course of Year 6, when Jack’s weight continued to increase, ‘bullying by other students became horrendous’.<sup>237</sup>
179. Leif described their experiences in Year 8 at a state high school:
- boys would wait until I was in the [locker] area alone and then hold the gates closed, while shouting to other students that they had ‘caged the beast’.<sup>238</sup>
180. A common theme among witnesses at Public hearing 7 who described experiencing bullying was the ineffective responses of their school in addressing these behaviours.
181. Ms Scharnke said that school staff did not intervene when she was bullied and in fact denied that any bullying had occurred.<sup>239</sup>
182. Amy suspected Sam was being bullied at school when she picked him up one day and found he had an injured cheek. He told her that a girl had pushed him in the face.<sup>240</sup> She said that despite mentioning it to the school, they did not take any action. Much later, Sam told his parents ‘that school made him really sad, that he did not want to be there and he was bullied’.<sup>241</sup>
183. Ms Bayles considered that the school did not do enough to support Quaden.<sup>242</sup> The school did not communicate the anti-bullying policies that may have been in place. In her view, complaint processes within the school were also inadequate. Ms Bayles thought that part of the problem was a lack of understanding of diversity amongst teachers and school staff, particularly about race, disability and intersectionality.<sup>243</sup> She told the Royal Commission:

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233 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [37].

234 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [38].

235 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [38].

236 Transcript, Sharon, Public hearing 7, 15 October 2020, P-293 [20–21].

237 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [49].

238 Exhibit 7-199, ‘Statement of ‘Leif’’, 13 March 2020, at [70].

239 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [30].

240 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [100].

241 Exhibit 7-12, ‘Statement of ‘Amy’’, 25 September 2020, at [137].

242 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [102–124].

243 Exhibit 7-01, ‘Statement of Yarraka Bayles’, 24 September 2020, at [79].

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I want the focus to be off anti-bullying. By that I mean, my focus is putting things in place so kids don't feel left out. I would rather not call these kids bullies. I don't believe they want to hurt kids, they don't understand the consequences of their actions. I don't want to get kids expelled or suspended because that doesn't help. I don't blame them (or the school in some respects), there is just not enough education around kids with disabilities, let alone Murri kids with disabilities. There is also a need to educate parents and the broader community.<sup>244</sup>

### Area for further inquiry

The Royal Commission will consider further the ways in which education systems should protect the inherent dignity and value of students with disability, in particular by preventing them from being bullied. We will also consider the role that education plays in shaping broader community attitudes towards people with disability.

## Workforce capacity

184. Skilled educators are central to students with disability being able to participate in safe, quality and inclusive education. Teachers are largely responsible for the day-to-day implementation of reasonable adjustments and supports in the classroom, as well as having obligations under the *DDA* and *DSE* in respect of students with disability.
185. All teachers in Australia must be registered with the relevant educational authority in their state or territory and are subject to the Australian Professional Standards for Teachers (APST). These standards contain broad references to capabilities linked to teaching students with disability.<sup>245</sup>
186. To become registered, teachers must have completed an accredited Initial Teacher Education program (that is, a Bachelor of Education) and demonstrate competency against the APST. Teachers are required to periodically renew their registration by evidencing their continued competence against the APST and undertaking professional development activities.<sup>246</sup>
187. We heard evidence at Public hearing 7 that training provided to pre-and in-service teachers in Australia does not adequately prepare them to support students with disability.

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244 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [163].

245 Australian Institute for Teaching and School Leadership, *Australian Professional Standards for Teachers*, 2018, focus area 1.5, focus area 1.6 and focus area 4.1.

246 Australian Institute for Teaching and School Leadership, *Framework for Teacher Registration in Australia*, 2011, p 12.

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188. Past reports and inquiries have made a series of recommendations to strengthen the capacity of the teaching workforce to support students with disability.<sup>247</sup> For example:
- In the *Access to real learning report*, the Senate Committee noted the need for greater awareness of the rights of students with disability. It also supported training in teaching practice for students with disability as part of both initial teacher education and continuing professional development.<sup>248</sup>
  - Both the 2015 and 2020 DSE reviews recommended that training in the *DSE* and in providing support to students with disability should be included in compulsory pre-and in-service training for teachers.<sup>249</sup>
  - This was also recommended in relation to principals by the *NSW Ombudsman 2017 Report*.<sup>250</sup>
  - The *Queensland Schools disability review* recommended that the Queensland Department of Education work with universities to ensure adoption of inclusive education curriculum.<sup>251</sup>

## Disability awareness and understanding

189. Witnesses at Public hearing 7 described situations where educators lacked the training and awareness of disability needed to provide adequate support to students with disability. In many cases, principals and teachers fundamentally misunderstood the nature of the students' disability and the adjustments required.
190. Sharon spoke about how Jack's teacher in Year 5 'didn't seem to be able to work with him at all' or have any understanding of the support he required and just left him sleeping under a desk 'a lot of the time' during class.<sup>252</sup>

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247 For example Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, recommendation 7(b); Victorian Equal Opportunity & Human Rights Commission, *Held Back: The experiences of students with disabilities in Victorian schools*, Report, September 2012, p 182; Hon Dr Geoff Gallop AC, Hon Dr Tricia Kavanagh and Mr Patrick Lee, *Valuing the teaching profession: an independent inquiry*, Final Report, 2020, recommendation 4.

248 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p 70.

249 Urbis for the Australian Department of Education, 2015 Review of the Disability Standards for Education 2005, Final Report, 17 July 2015, recommendation 4; Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, recommendation 5, 6.

250 NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017, p 89.

251 Deloitte Access Economics for Queensland Department of Education, *Review of education for students with disability in Queensland state schools*, February 2017, recommendation 5–4.

252 Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [36].

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191. Sarah said that Kobe's school displayed 'an embedded misunderstanding of Kobe's disability and complex support needs'. She felt the school did not appreciate the level of support Kobe required, and as a result delayed making a submission for additional funding to obtain this support.<sup>253</sup>

192. Ms Parker and Ms Flynn, representing Queensland Advocacy Incorporated (QAI), described a situation where a teacher struggled to adjust teaching strategies appropriately for a student with disability:

One example of this is a client who reported that a student, whose visual and aural skills were the best tools for learning, was deemed to be 'distractible' and 'disruptive' when other classes lined up outside to visit the library next door. This student learned best by what he heard the teacher say, rather than what was written on a board or on paper. The remedy used by the specialist teacher (Head of Special Education Services at the school) was not to ask that students outside were quiet, or to move the student to the front and middle of the class, but to place the student in a cardboard booth with headphones so they could not see nor hear the children outside. Unfortunately – the student could also not hear the teacher nor the lessons. The teacher effectively stripped the student of their learning abilities.<sup>254</sup>

193. Much of the evidence given by lived experience witnesses at Public hearing 7 focussed on educators' responses to students with disability who displayed behaviours of concern. In many of these instances, educators mischaracterised behaviours of concern as a student with disability being wilfully disruptive or naughty and responded punitively, rather than attempting to understand or address the underlying cause of the behaviours.

194. Amy stated that in her view, to his school, Sam:

would never be anything other than the 'naughty aggressive kid'. I could not help but feel that the plan was to continuously discipline him, rather than to work with him to realise his true capabilities.<sup>255</sup>

195. Similarly, Sharon said that the school told her, in relation to her son Jack, that:

we weren't disciplining him enough. It was all called bad behaviour. He was basically targeted as a naughty child that we didn't discipline correctly. So it all came back on our shoulders to go, 'You need to do something about your son because he's just a naughty little boy'.<sup>256</sup>

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253 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, at [63].

254 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [38].

255 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020, at [101].

256 Transcript, Sharon, Public hearing 7, 15 October 2020, P-281 [7–10].

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196. Professor Graham told the Royal Commission that her research had identified that educators assumed:

that a consequence is enough to lead to behavioural change. Underpinning this assumption is the belief that ‘misbehaviour’ is ‘the result of conscious decision-making and not the outcome of poor self-regulation and a lack in the forethought necessary to consider possible consequences before acting’.<sup>257</sup>

## Training for educators

197. Witnesses at Public hearing 7 concurred that there is a need for greater support and training for educators to help them understand how to work effectively with students with disability, in particular the provision of reasonable adjustments.
198. When asked about principals’ accountability for the education of students with disability, Mr Lassig from Education Queensland said that there was no specific training about providing adjustments.<sup>258</sup>
199. Professor Poed recommended that all teachers undergo mandatory training in the *DDA* and *DSE* as a condition of their professional registration.<sup>259</sup>
200. Dr de Bruin discussed the limited references to students with disability in the APST. She recommended that the APST be amended to include explicit references to the *DDA* and *DSE*,<sup>260</sup> and that teachers be required to undertake continuing professional development related to students with a disability as a condition of renewing their registration.<sup>261</sup>
201. Mr Lassig noted that a specific area of improvement for Queensland education was to ‘strengthen pre-service education’, stating:

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257 Linda Graham, ‘Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms: A Queensland case-study’, 2018, *International Journal of Inclusive Education*, pp 1-21 (EXP.0047.0001.0079) at 0082, cited in Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [146].

258 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-438 [16-21]. In their response to questions taken on notice, Education Queensland has provided the Royal Commission with additional information about training that is available to support principals ‘develop an understanding of inclusive practices, including how to differentiate for students with disability and/or diverse needs’ (Exhibit 7207, QLD.9999.0053.0001 at 0008-0009). However, that document does not identify any existing mandatory training program about the identification of adjustments.

259 Exhibit 7-114, ‘Statement of Shiralee Poed’, 25 September 2020, at [153].

260 Transcript, Dr Kate de Bruin, Public hearing 7, 15 October 2020, P-245 [40–45].

261 Transcript, Dr Kate de Bruin, Public hearing 7, 15 October 2020, P-246 [5–26].

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we've heard from a lot of our colleagues from universities of some of the key evidencebased strategies that help to engage and include students with disability. Many of those courses, there are a small number of those courses as part of university qualifications and I would see that there's an opportunity to further partner with universities to extend the scope of those courses, but probably also include – ensure there's an inclusion lens through all preservice education courses so it becomes embedded in the training.<sup>262</sup>

202. Sam's experiences, set out in Part 4 of this Report, illustrate the ongoing and cyclical nature of suspensions for some students with disability. His mother Amy said that based on her experiences with the NSW education system, there needs to be a professional with specialised skill available to support teachers to identify triggers for problematic behaviour and work to develop solutions.<sup>263</sup>
203. This was echoed by Professor Graham, who recommended that teachers be required to undergo training in evidence-based positive approaches to classroom management as part of their initial teacher education.<sup>264</sup>
204. Mr Lassig agreed that there was a need for further investment in evidence-based, whole school approaches to supporting student behaviour.<sup>265</sup>

#### **Area for further inquiry**

The Royal Commission will consider further measures that build the skills of educators in supporting students with disability, including awareness of the *DDA* and *DSE*, implementation of reasonable adjustments, and responding to behaviours of concern.

## **Oversight and regulation**

205. Educational practices are regulated by statutes, rules made under statutory authority and departmental policies. These statutes, rules and policies prescribe the rights and duties of schools and educators. They also confer rights and in certain respects impose duties on school students and their parents or guardians.

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262 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-410 [16–23].

263 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020, at [146].

264 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [213].

265 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-411 [25–27].

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206. The *DDA* is a statute which aims to eliminate, as far as possible, discrimination against people with disability in a range of areas, including education.<sup>266</sup> Pursuant to powers conferred by the *DDA*,<sup>267</sup> *Disability Standards for Education (DSE)* were established in 2005, for the purpose of clarifying and elaborating on the legal obligations relating to education under the *DDA*.<sup>268</sup>
207. In addition to the *DDA* and *DSE*, each jurisdiction has its own rules and policies on the education of students with disability. These cover topics such as enrolment in education, the use of exclusionary discipline and the provision of reasonable adjustments.
208. Regulations must be accompanied by oversight mechanisms if they are to be effective. These mechanisms include independent complaints processes and data collection and analysis. In extreme circumstances, they may include the imposition of sanctions for regulatory breaches.
209. The evidence at Public hearing 7 highlighted gaps in existing policy frameworks which contribute to the exclusion of students with disability from mainstream education.

## Denial or discouragement of enrolment

210. Students with disability are protected from discrimination in enrolment by section 22 of the *DDA*.
211. The *DSE* further clarify that:
- (1) The education provider must take reasonable steps to ensure that the prospective student is able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability, and without experiencing discrimination.
  - (2) The provider must ensure that, in making the decision whether or not to offer the prospective student a place in the institution, or in a particular course or program applied for by the prospective student, the prospective student is treated on the same basis as a prospective student without a disability, and without experiencing discrimination.<sup>269</sup>

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266 *Disability Discrimination Act 1992* (Cth), s 4(a)(i).

267 *Disability Discrimination Act 1992* (Cth), s 31.

268 *Disability Standards for Education 2005* (Cth), Introduction.

269 *Disability Standards for Education 2005* (Cth), [4.2](1-2).

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212. Past reports and inquiries have considered the issue of students with disability discouraged from or denied enrolment in mainstream education. In the *Access to real learning report*, the Senate Committee found that ‘far more’ needs to be done to enforce the law prohibiting the prevention of enrolment of students with disability.<sup>270</sup>
213. The two most recent DSE reviews recorded the views of stakeholders that there is a ‘lack of transparency in decision-making over the enrolment of students’<sup>271</sup> and that there are few consequences for education providers who fail to comply with the *DSE*, including in respect of enrolment.<sup>272</sup>
214. Evidence at Public hearing 7 was consistent with these views. Witnesses described being denied enrolment because of their disability. In some cases this took the form of outright refusal to enrol; in other cases, parents were encouraged to seek other options.
215. Sharon looked for a new high school for Jack in 2014 and was told by local schools that they ‘just don’t take children like Jack’.<sup>273</sup> Jack was also refused tutoring by a company in case he interrupted the other students ‘if he made noise’.<sup>274</sup>
216. Ms Scharnke said that when her family moved and tried to find a new school for her, principals who seemed willing to enrol her changed their minds when her father informed them that she had a disability.<sup>275</sup>
217. In addition to denial and discouragement of enrolment, the Royal Commission heard that students with disability were placed on part-time or conditional enrolment, often after a period of expulsion or suspension. Part-time or conditional enrolment is often grouped together with denial and discouragement of enrolment under the heading of ‘gatekeeping’, as it has the same effect of denying students with disability full access to mainstream schooling.
218. This was echoed in the experiences of Sarah, who said that the school suggested reducing Kobe’s contact hours as a means of reducing his anxiety.<sup>276</sup> Kobe’s part-

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270 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016 [2.57].

271 Urbis for the Australian Department of Education, *2015 Review of the Disability Standards for Education 2005*, Final Report, 17 July 2015, p 22.

272 Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, p 47.

273 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [60].

274 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [60].

275 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [43].

276 Exhibit 7-89, ‘Statement of ‘Sarah’’, 23 July 2020, at [86].

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time enrolment meant he attended school for only a few hours a day.<sup>277</sup> Sarah's evidence highlighted a lack of formalised documentation of Kobe's part-time schooling arrangements, which she said limited her ability to 'input into any strategies or goals that would enable Kobe to exercise his right to full-time schooling'.<sup>278</sup>

219. Ms Howlett from Education Queensland explained that following an expulsion, a new school might commence a student with disability on a part-time attendance arrangement.<sup>279</sup> She added that part-time attendance can be presented to a family as a way of transitioning the student into a new environment in a less anxiety-provoking way.<sup>280</sup>

220. Mr Chris Lassig from Education Queensland stated that:

The only person with the authority to refuse the enrolment of an otherwise eligible student is the Director-General of the Department or an approved delegate of the Director-General. The Refusal to Enrol – Risk to Safety or Wellbeing procedure explains that the Director-General can refuse the enrolment of a prospective student if they reasonably believe that, if enrolled, the prospective student would pose an unacceptable risk to the safety or wellbeing of members of the school community. The Director-General may provide the parent and prospective students with a show cause notice as to why they should not be refused enrolment, or may dismiss the matter and refer back to the principal to enrol the student through normal processes. This decision can be appealed or reviewed.<sup>281</sup>

221. The Refusal to Enrol – Risk to Safety or Wellbeing procedure referred to by Mr Lassig states that principals have a responsibility to be 'mindful that it is unlawful to refuse or place special conditions on a prospective student's enrolment on grounds they have a disability' under the *DDA*.<sup>282</sup>

222. On 28 January 2020, Education Queensland implemented new, nonbinding, parttime educational program guidelines.<sup>283</sup> The guidelines require data to be entered into OneSchool to monitor parttime arrangements that exceed 10 weeks (one school term).<sup>284</sup> There is no requirement to record part-time programs of fewer than 10 weeks, or informal part-time arrangements.<sup>285</sup> Accordingly, there is no reliable information on the prevalence and nature of these arrangements.

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277 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, at [87].

278 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, at [89].

279 Transcript, Ann Howlett, Public hearing 7, 15 October 2020, P-346 [45].

280 Transcript, Ann Howlett, Public hearing 7, 15 October 2020, P-348 [15–17].

281 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020, at [95].

282 Exhibit 7-174.11, Refusal to Enrol – Risk to Safety and Wellbeing Procedure, p 2.

283 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020, at [100].

284 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020, at [100].

285 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-450 [12–19].

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223. Mr Lassig accepted that Education Queensland does not know how many students are attending school part time.<sup>286</sup> He agreed that informal methods of discouraging and preventing enrolment are a matter of concern and something that the Department needed to look at very carefully.<sup>287</sup>

### Area for further inquiry

The Royal Commission will consider ways to strengthen and more effectively enforce obligations of educators in respect of enrolment of students with disability, as set out in the *DDA* and *DSE*.

## Reasonable adjustments

224. The *DDA* defines discrimination to include a failure to make ‘reasonable adjustments’ for a person with disability where that failure has the effect that the person with disability is treated less favourably than a person without disability would be treated in circumstances that are not materially different.<sup>288</sup> Reasonable adjustments are central to the participation of students with disability in education on an equal basis.
225. The *DSE* require students with disability or their associates to be consulted about the reasonable adjustments to be made for the students.<sup>289</sup>
226. Past inquiries have considered the provision of reasonable adjustments in education:
- The *Access to real learning report* found that despite an obligation under the *DSE* to make reasonable adjustments, ‘far too often’ these are not provided.<sup>290</sup>
  - The 2020 *DSE Review* identified a need for educators to be given more guidance on how to develop effective reasonable adjustments and make appropriate modifications to curriculum.<sup>291</sup>
  - The 2015 *DSE Review* found that, while a range of information about the standards is available, there is a lack of ‘easily digestible examples of a negotiated decision-making process through which reasonable adjustments are determined’.<sup>292</sup>

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286 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-450 [2–3].

287 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-448 [37–44].

288 *Disability Discrimination Act 1992* (Cth) ss 5(2), (3).

289 *Disability Standards for Education 2005* (Cth), [3.7].

290 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, [5.12].

291 Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, p 36.

292 Urbis for the Australian Department of Education, *2015 Review of the Disability Standards for Education 2005*, Final Report, 17 July 2015, p 39.

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## Identification and implementation of reasonable adjustments

227. We heard evidence at Public hearing 7 of repeated failures to identify and implement appropriate reasonable adjustments. In some cases, reasonable adjustments were not provided at all. In others, there appeared to be failures to take into account the views of students and their parents or to properly plan individualised reasonable adjustments.
228. Sarah's evidence illustrates the importance of providing adequate supports and adjustments. She said that Kobe's transition to high school 'was successful due to ongoing and careful planning, supports and resourcing put in place by the school'.<sup>293</sup> But when Kobe moved to another school, no individual plan was initially developed setting out Kobe's adjustments and recommended adjustments were not implemented consistently, or at all. The inadequate implementation of adjustments, in Sarah's view, led to an escalation of Kobe's behaviour and anxiety. She felt that this ultimately resulted in his exclusion by the school.<sup>294</sup>
229. An adjustment on Ms Scharnke's plan permitted her to leave the classroom and go to the 'special needs building' when she became distressed.<sup>295</sup> Ms Scharnke said that teachers sometimes discouraged her from accessing this building, even though it was listed as an adjustment on her plan.<sup>296</sup>
230. Ms Bayles' evidence illustrated the importance of considering cultural factors when providing reasonable adjustments. Quaden requires a support worker to assist him with toileting and to supervise him in the playground, because if he falls it could be life threatening.<sup>297</sup> He feels most comfortable and culturally safe with a First Nations male support worker assisting him.<sup>298</sup> In the past, the assigned support worker has been a nonIndigenous woman.<sup>299</sup> This meant that Quaden was not comfortable going to the toilet and would be teased by his peers if he soiled himself.<sup>300</sup>
231. However, Ms Bayles explained 'we were just happy he had a support worker so we didn't feel we had any right to question or request a change in support worker'.<sup>301</sup> Quaden now has access to his preferred support workers,<sup>302</sup> but when they are not available this causes Quaden anxiety and affects his experience at school.<sup>303</sup>

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293 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, at [38].

294 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, p 11–26, see paragraph [91].

295 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [65].

296 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [66].

297 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [60].

298 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [61], [63–64].

299 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [61].

300 Transcript, Yarraka Bayles, Public hearing 7, 12 October 2020, P-33 [15–23].

301 Transcript, Yarraka Bayles, Public hearing 7, 12 October 2020, P-33 [20–23].

302 Transcript, Yarraka Bayles, Public hearing 7, 12 October 2020, P-32 [38–46].

303 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [65].

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232. Advocates echoed the experiences described by students and parents. Mary Sayers said that the results of CYDA's 2019 survey indicated that many students with disability did not have individualised plans in place. Even among those who did, families did not always feel that these were operating well.<sup>304</sup>
233. Michelle O'Flynn and Nikki Parker heard from 'numerous' parents whose children's needs were not being met in the provision of adjustments.<sup>305</sup> They believe that families' views are often not considered when deciding how or what adjustments should be provided.<sup>306</sup>
234. NSW identified the Aboriginal Education Policy and Turning Policy into Action as key documents relating to the education of First Nations students with disability. However, neither policy refers explicitly to First Nations students with disability.<sup>307</sup>
235. In NSW, the Assisting Students with Learning Difficulties Policy is the key document used by classroom teachers who are primarily responsible 'for identifying and meeting the specific learning needs of students with difficulties in basic areas of learning'.<sup>308</sup> The policy states that 'Principals are responsible for ensuring implementation of support for students experiencing difficulties in learning'.<sup>309</sup> But the policy does not describe the process by which principals and teachers should identify and implement reasonable adjustments.
236. Mr Potter said his expectation was that 'professional people in schools would clearly understand what was required to be in place to support students with disabilities'.<sup>310</sup> He also expected school personnel would take advice from experts, both within and outside of the NSW Department, when making decisions about students with a disability,<sup>311</sup> but it was ultimately a decision for the principal to identify appropriate adjustments for the student.<sup>312</sup> Mr Potter accepted that identifying a reasonable adjustment was a matter involving considerable discretion which could lead to radically different experiences for students at different schools.<sup>313</sup>
237. NSW agreed that, in principle, better direction and guidance should be given to educators about the requirements under the *DDA* and the *DSE*. Since July 2020,

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304 Transcript, Mary Sayers, Public hearing 7, 12 October 2020, P-53 [6–21].

305 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [41].

306 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [42]; Transcript, Nikki Parker, Public hearing 7, 12 October 2020, P-59 [19–25].

307 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [19].

308 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [53].

309 Exhibit 7-86.15, NSW.0029.3089.

310 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-143 [23–25].

311 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-143 [38–39].

312 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-144 [1–5].

313 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-146 [22–27].

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the NSW Department requires school leaders, including principals, to complete training in the *DDA* and the *DSE* every three years.<sup>314</sup>

238. NSW also accepted that the system for identifying and implementing reasonable adjustments in place when Sam was enrolled at his NSW government school lacked clarity<sup>315</sup> and was prone to inconsistent and varying application.<sup>316</sup> NSW submitted that since Sam's experience, the state has worked to provide additional support for students with complex behavioural needs, including by commencing a recruitment process for behaviour specialists.<sup>317</sup>
239. In Queensland, the Inclusive Education Policy explains that 'inclusive education means that students can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments'.<sup>318</sup> The Policy does not include guidance for principals and teachers on how to identify and implement reasonable adjustments, nor does it set out standards or a review process for assessing whether adjustments are adequate and effective.

## Complaints

240. When reasonable adjustments are not implemented in an effective manner in line with the *DDA* and *DSE*, it may be difficult for students with disability and their parents to seek a resolution.
241. Dr de Bruin and Ms Parker both observed that parents are deterred from making complaints because of the time-consuming, exhausting and sometimes inaccessible nature of this process.<sup>319</sup>
242. Amy suggested greater oversight of supports provided by schools to students with disability is required. In her view, 'parents need somebody who is independent who can investigate what is going on'.<sup>320</sup>
243. The NSW Department of Education has informed the Royal Commission that the complaints handling policy and procedures are currently under review and options for an independent mechanism are being considered.<sup>321</sup>

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314 Exhibit 7-208, NSW.9999.0007.0001 at [0003]; Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [76–77].

315 See Part 4 of this Report.

316 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [57].

317 Exhibit 786, 'Statement of Frank Potter', 7 October 2020, at [104–106].

318 Exhibit 7-174.13, QLD.9999.0007.0220.

319 Transcript, Kate de Bruin, Public hearing 7, 14 October 2020, P-248 [16–29]; Transcript, Nikki Parker, Public hearing 7, 12 October 2020, P-66 [10–36].

320 Exhibit 7-12, 'Statement of "Amy"', 25 September 2020, at [44].

321 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [42].

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244. Queensland's submissions noted that the 2020 DSE Review recommended that the Australian Government develop 'information products on the [DSE]' and that the *DSE* is amended 'to include principles on consultation, issues resolution and complaints handling processes'.<sup>322</sup> It appears that Education Queensland proposes to wait for amendments to the *DSE* before developing formal policies concerning consultation with students and families on adjustments.<sup>323</sup>

### General finding 1

The evidence given by Queensland and NSW about their respective reasonable adjustment policies indicates that the provision of reasonable adjustments is mainly left to the judgment and discretion of educators, with little departmental oversight.

### Area for further inquiry

The Royal Commission will further consider mechanisms by which the obligations to make reasonable adjustments, as set out in the *DDA* and *DSE*, could be strengthened and more effectively enforced, including improving awareness and understanding of these obligations among educators.

## Exclusionary discipline

245. While there are policies and procedures governing the use of exclusionary discipline in NSW and Queensland, in both jurisdictions principals have ultimate discretion.
246. Past reports and inquiries, such as the *NSW Ombudsman 2017 Report*, have found a need for greater rigour in the process and monitoring of exclusionary discipline.<sup>324</sup>
247. Sarah noted that Kobe's school was required under policy to consider a student's individual circumstances in the application of any decisions. However, despite this, she felt that in making the decision to expel Kobe, the school gave 'no consideration ... to the fact that, because of his disability, Kobe's misbehaviour was driven by anxiety associated with inadequate support'.<sup>325</sup>
248. Sarah also described the use of 'informal' exclusions by Kobe's school, which appeared to escape any form of oversight or monitoring altogether:

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322 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [27]; Department of Education, Skills and Employment, *Final Report of the 2020 Review of the Disability Standards for Education 2005*, March 2021 p vii (recommendations 1 and 2).

323 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [27].

324 NSW Ombudsman, Inquiry into behaviour management in schools, Final Report, August 2017, p 42.

325 Exhibit 7-89, 'Statement of 'Sarah'', 23 July 2020, at [96].

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Although the high use of formal discipline against Kobe by School 2 was alarming, I was more troubled by the extent to which the school relied upon 'soft' or informal suspensions to remove Kobe from the school. These are not recorded in OneSchool records as formal suspensions and would often take the form of absences following instances of the school ringing me up and requesting that Kobe be taken home for the day. For example, OneSchool records show that he had numerous part day absences while enrolled at School 2. Several of these absences are listed as 'unexplained', 'other' or 'unauthorised' without formal arrangement.<sup>326</sup>

249. Mr Lassig accepted that there were limited monitoring requirements around how decisions about exclusionary discipline are made in Queensland state schools.<sup>327</sup> He agreed that there would be inconsistencies around how individual circumstances are taken into account when making such decisions.<sup>328</sup> He acknowledged that this concerned him at a systemic level.<sup>329</sup>
250. Other concerns raised at the hearing relate to the use of exclusionary discipline against very young children, like Sam, and their disproportionate use against First Nations students with disability, as indicated by NSW and Queensland's own data.<sup>330</sup> Despite these concerns, the NSW Student Behaviour Strategy, which was released early in 2021, does not contain specific limitations on periods of suspension for children with disability in kindergarten and the early years of primary school. Similarly, neither Queensland nor NSW has any specific strategies or policies aimed at addressing the use of exclusionary discipline against First Nations students with disability.<sup>331</sup>
251. Queensland submitted that the Student Discipline Procedure provides particular guidance on the enrolment of students in Queensland schools during the period in which they are subject to exclusionary discipline.<sup>332</sup> While the Procedure notes that principals should take reasonable steps to ensure students can continue their education while they are suspended,<sup>333</sup> it does not provide guidance on the process for reenrolling students at a new school after they have been expelled. Additionally, the responsibilities of a regional case manager do not appear to include assisting students with enrolment following a student disciplinary absence.<sup>334</sup>

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326 Exhibit 7-89, 'Statement of Sarah', 23 July 2020, at [84].

327 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-447 [33–35].

328 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-447 [12–17].

329 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-447 [19–21].

330 Response to Questions on Notice, State of Queensland, 16 July 2021, at 1(a),1(c); Response to Questions on Notice, State of NSW, 16 July 2021, at [9], [16].

331 Exhibit 7-219, QLD.9999.0056.0001, Response to Questions on Notice, State of Queensland, 16 July 2021, p 1-2; Exhibit 7-219, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, [4].

332 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [35].

333 Exhibit 7-174.9, QLD.9999.0048.0057.

334 Exhibit 7-174.9, QLD.9999.0048.0057.

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### Area for further inquiry

The Royal Commission will give further consideration to the policy and regulatory levers available to address the disproportionate use of exclusionary discipline against students with disability, particularly in respect of First Nations students with disability and very young children with disability.

## Restrictive practices

252. The Royal Commission is considering the use of restrictive practices across a range of settings. We have received information suggesting that restrictive practices are used in education settings.<sup>335</sup>
253. Public hearing 7 highlighted a lack of oversight and regulation around the use of restrictive practices against children with disability in educational settings. This is a major concern given the potential of these practices to cause significant physical and emotional harm to individuals, noting the additional duty of care for children.
254. This is by no means a new issue. Past reports have considered at length the use of restrictive practices, and have consistently recommended that these practices be prohibited under Australian law.<sup>336</sup>
255. In 2019, the CRPD Committee urged Australia to ‘[e]nd the practice of detaining and restraining children with disabilities in any setting’ and expressed ‘serious concerns’ about ‘legislation, policies and practices’ permitting the use of restrictive practices.<sup>337</sup> The CRPD Committee also recommended that Australia ‘establish a nationally consistent legislative and administrative framework’ for protecting people with disability from the use of restrictive practices and eliminating their use in all settings.<sup>338</sup>
256. The 2015 Senate Committee report on violence in institutional settings recommended that the use of restrictive practices against children ‘be eliminated as a national

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335 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Restrictive practices issues paper*, April 2021, pp 6, 8.

336 For example Australian Human Rights Commission, *Information concerning Australia’s compliance with the Convention on the Rights of Persons with Disabilities*, Submission to the United Nations Committee on the Rights of Persons with Disabilities, 25 July 2019, p 28.

337 Committee on the Rights of Persons With Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess. UN DOC CRPD/C/AUS/CO/2-3, [27e, 29a].

338 Committee on the Rights of Persons With Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess. UN DOC CRPD/C/AUS/CO/2-3, [30a].

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priority'.<sup>339</sup> It noted that while there is a National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Services Sector, there was no framework for students with disability.<sup>340</sup> The 2016 *Access to real learning report* also recommended that the Australian Government work with states and territories to end restrictive practices in schools, endorsing the recommendations made by the 2015 Senate report and 'strongly' condemning the use of restrictive practices.<sup>341</sup>

257. The *NSW Ombudsman 2017 Report* examined responses to behaviours of concern, including the use of restrictive practices. In that report, the NSW Ombudsman noted that 'there is no specific legislative framework regulating the use of restrictive practices, such as physical restraint or seclusion, in schools in NSW'.<sup>342</sup> In case studies considered as part of the report, the NSW Ombudsman observed that the use of restrictive practices was occurring in a highly unregulated manner.<sup>343</sup>
258. The NSW Ombudsman found that there was a need for more guidance on the use of restrictive practices and the circumstances in which they were used, given their potential to have a 'significant and traumatic impact on the student involved'. The report also called for greater rigour in how these incidents were reported.<sup>344</sup>
259. Several witnesses at Public hearing 7 spoke about their experiences of restrictive practices in education settings. Leif, for example, told the Royal Commission that they were physically restrained in response to behaviours which were triggered by bullying from other students.<sup>345</sup>
260. Jack's parents said Jack was 'grabbed' by school staff when he was in primary school in response to behaviours that were a manifestation of his disability. As a result of an uncontrollable tic, Jack said 'you mongrel', and a teacher physically grabbed him and took him to the office.<sup>346</sup> In another incident, a primary school teacher grabbed Jack

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339 Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Report, 25 November 2015, p 279, [10.59].

340 Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Report, 25 November 2015, p 114, [4.134].

341 Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, recommendation 10, [2.102].

342 NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017, p 26.

343 NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017, pp 26–27.

344 NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017, p ix, recommendation 28.

345 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020, at [73].

346 Exhibit 7-116, 'Statement of 'Alex'', 24 February 2020, at [29].

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and took him to the office, saying his squealing tic made her ears ring and ‘he needed to manage his Tourette’s better in public’.<sup>347</sup>

261. Ms Scharnke shared her experiences of physical restraint and seclusion,<sup>348</sup> describing an incident where:

[my teacher] and the teaching assistant picked me up without my consent. The teacher held my torso and the teaching assistant held my legs. I screamed at them to stop and let me go, but they did not. They carried me outside of the classroom while I was screaming, and dropped me onto the concrete. I remember the class was there, watching. I was left, completely unsupervised, in an undercover locker room out the front of the classrooms where students’ bags were kept.<sup>349</sup>

262. Advocates also discussed instances of restrictive practices they had heard about or witnessed.<sup>350</sup> Ms Elder of Family Advocacy described an incident where she said a child was pinned to the ground in ‘a prone position by multiple staff members at school’.<sup>351</sup>

263. The information provided by NSW in its submissions highlighted the lack of clarity regarding the use of restrictive practices or even a clear definition of what restrictive practices are.

264. In Sam’s case, discussed earlier in this Report, restraint was listed by the NSW Department of Education as an adjustment that had been provided to Sam.<sup>352</sup> While Mr Potter, on behalf of the Department, agreed that the restraint of Sam was not a reasonable adjustment based on all the circumstances,<sup>353</sup> NSW submitted to the Royal Commission that restraints may constitute a reasonable adjustment in some circumstances.<sup>354</sup>

265. NSW argued that the following examples of physical restraint may constitute a reasonable adjustment:

- a) the use of a hands-on technique that guides or redirects a person away from reasonably foreseeable injury or is a reasonable response to an immediate danger; for example, a kindergarten student who is undertaking a fine-motor activity involving scissors and needs an adjustment to safely use the equipment;
- b) temporary physical contact, such as an open hand on the arm, back or

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347 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [39].

348 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [26–32].

349 Exhibit 7-168, ‘Statement of Maria Rachel Scharnke’, 21 April 2020, at [26–27].

350 Exhibit 7-06, ‘Joint Statement of Michelle O’Flynn and Nikki Parker’, 23 September 2020, at [48–52].

351 Exhibit 7-08, ‘Statement of Cecile Elder’, 28 September 2020, at [64].

352 Exhibit 7-12.32, IND.0040.0001.0099.

353 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-171 [1–4].

354 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [37].

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shoulders to remove a student from a situation to a safe place. For example, a student moving too close to an open flame being used during a learning activity; and

- c) supporting a student to move to another location or helping them into a vehicle or use the stairs.<sup>355</sup>

266. These examples of 'restraint' provided by NSW do not accord with the kinds of practices revealed by the evidence at Public hearing 7, as described above.
267. In the absence of a national policy or guideline on the use of restrictive practices in education settings, the NDIS Quality and Safeguards Commission's Regulated Restrictive Practices Guide provides guidance. It defines physical restraint as 'the use of action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour'.<sup>356</sup> The guide explicitly states that 'physically guiding a person away from ... an unsafe situation, such as moving their hand away from a hot plate' does not constitute physical restraint.<sup>357</sup>
268. NSW indicated that the NSW Department of Education is in the process of developing a Restrictive Practices Policy and guidance material for schools, which are in the early stages of consultation.<sup>358</sup>
269. Education Queensland has introduced a new Restrictive Practices Procedure for Queensland state schools<sup>359</sup> following a recommendation made in the *Queensland schools disability review*.<sup>360</sup> The procedure contains a mandatory reporting obligation on the principal to provide details of the incident to their supervisor or delegate, when the principal has a reasonable belief that a restrictive practice used by a staff member was not appropriate or not compliant with the procedure.<sup>361</sup>

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355 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [37].

356 NDIS Quality and Safeguards Commission, Regulated Restrictive Practices Guide, October 2020, p 21.

357 NDIS Quality and Safeguards Commission, Regulated Restrictive Practices Guide, October 2020, p 21.

358 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [41].

359 Exhibit 7-174.7, QLD.9999.0048.0028.

360 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-450 [46] P- 452 [2].

361 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020, at [69]; Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-452 [33]–P-453 [4].

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## General finding 2

There has been insufficient progress towards addressing the lack of regulation of restrictive practices in education settings in Australia. Coupled with the absence of a clear, agreed definition of what constitutes a 'restrictive practice', this places children with disability at significant risk of harm.

## Area for further inquiry

- The Royal Commission will consider further how the term 'restrictive practice' should be defined in an education setting and what regulation of restrictive practices is needed to ensure the safety of students with disability. This will include consideration of past recommendations that these practices should be prohibited altogether.
- The Royal Commission will request that NSW provide an overview of the actions it has taken in response to the recommendations of the NSW Ombudsman's 2017 *Inquiry into behaviour management in schools: Final report*.

## Data

270. The Royal Commission has previously commented on a lack of publicly available data about the extent of violence, abuse, neglect and exploitation of people with disability across a range of settings, including schools. Until this critical data gap is addressed, it will be difficult to better identify and support people who are at risk of or who have experienced or are experiencing violence, abuse, neglect and exploitation.<sup>362</sup>
271. These observations are consistent with the evidence presented at Public hearing 7, which highlighted the lack of data and information about bullying, exclusionary discipline and restrictive practices experienced by students with disability.<sup>363</sup>

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362 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 305.

363 For example Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-449 [32–35]; Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [179]; Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [114]; Transcript, Professor Linda Graham, Public hearing 7, 15 October 2020, P-373 [5–9].

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272. Pursuant to Article 31 of the *CRPD* 'States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention'.<sup>364</sup> The *CRPD* is the only human rights treaty to require the collection of statistics and other data.<sup>365</sup>
273. Professor Ron McCallum, in a research report prepared for the Royal Commission, concluded that Australia was broadly in compliance with Article 31 of the *CRPD*.<sup>366</sup> However, in 2019 the CRPD Committee raised concerns about the lack of national disaggregated data on students with disability in Australia. The Committee noted in particular the lack of data about rates of bullying and restrictive practices experienced by students with disability.<sup>367</sup>
274. The CRPD Committee recommended that the Australian Government:
- Expand the collection of data on the number of students with disabilities who do not qualify for an adjustment and who are unable to enrol in local mainstream schools, as well as data on educational attainment, on completion, suspension and expulsion rates, on the use of restrictive practices and on cases of bullying.<sup>368</sup>
275. Past reports and inquiries about education have similarly called for improvements to data collection about the experiences of students with disability.<sup>369</sup>

## Gaps in data

276. Academic witnesses at Public hearing 7 commented on the paucity of publicly available data on students with disability and noted the challenges that the lack of an evidence base presents in addressing barriers to safe, quality and inclusive education for students with disability.

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<sup>364</sup> United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, United Nations, Treaty Series vol.999 p.3 (entered into force 3 May 2008) art 31(1).

<sup>365</sup> The Committee on the Elimination of Discrimination against Women has recognised the importance of gathering statistics to chart the progress of women. See: Committee On the Elimination of Discrimination against Women, *General Recommendation 9, Statistical data concerning the situation of women*, 8<sup>th</sup> sess, 1989.

<sup>366</sup> Professor Ron McCallum AO, *The United Nations Convention on the Rights of Persons with Disabilities – An Assessment of Australia Level of Compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 8 October 2020, p 152.

<sup>367</sup> Committee on the Rights of Persons With Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess. UN DOC CRPD/C/AUS/CO/2-3, 15 October 2019, p 11.

<sup>368</sup> Committee on the Rights of Persons With Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess. UN DOC CRPD/C/AUS/CO/2-3, 15 October 2019, p 11.

<sup>369</sup> Australian Human Rights Commission, *Information Concerning Australia's Compliance with the Convention of the Rights of Persons with Disabilities*, Submission to the Committee on the Rights of Persons with Disabilities, 25 July 2019, pp 35 [117], 21 [67]; NSW Ombudsman, *Inquiry into behaviour management in schools*, Final Report, August 2017, pp 29, 32.

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277. Dr de Bruin told the Royal Commission that there is ‘no collection of state or national data on where students with disability are educated, beyond those who receive targeted funding under State-based policies, which is only a small proportion of students with disability’.<sup>370</sup>
278. Professor Graham noted that education departments publish only limited data on suspensions and expulsions,<sup>371</sup> and that no department disaggregated its published data by reference to students with disability.<sup>372</sup>
279. Associate Professor Poed gave evidence that there is a lack of information available about the circumstances in which restrictive practices are used in Australian schools.<sup>373</sup> She noted that this limits ‘the ability of researchers to accurately analyse the extent to which particular practices have been used’, and in what contexts, regions or settings they occurred.<sup>374</sup>
280. Following Public hearing 7, both NSW and Queensland provided the Royal Commission with some disaggregated data in response to questions taken on notice. Data provided established that, in 2020, students with disability were disproportionately subject to exclusionary discipline in these jurisdictions’ schools.<sup>375</sup>

## Current data collection practices

281. Both jurisdictions provided evidence and information about their current data collection practices in evidence and submissions at Public hearing 7.

### NSW

282. Counsel Assisting’s Written Submissions contained a ‘possible future recommendation’ about the collection and publication of data about students with disability, including data on full or part-time attendance rates; home schooling rates; educational attainment; use of exclusionary discipline; restrictive practices and complaints.<sup>376</sup>
283. In response to this ‘possible future recommendation’, NSW told the Royal Commission that it:

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370 Exhibit 7-113, ‘Statement of Kate de Bruin’, 28 September 2020, at [70].

371 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [114]; Transcript, Professor Linda Graham, Public hearing 7, 15 October 2020, P-373 [5–9].

372 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [114].

373 Exhibit 7-114, ‘Statement of Shiralee Poed’, 25 September 2020, at [179].

374 Exhibit 7-114, ‘Statement of Shiralee Poed’, 25 September 2020, at [191–192].

375 Exhibit 7-219, QLD.9999.0056.0001, Response to Questions on Notice, State of Queensland, 16 July 2021, p 1.

376 Submissions of Counsel Assisting, Public hearing 7, 1 April 2021, p 104.

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does not currently collect and centrally hold the data referred to in the possible future recommendation. This proposal raises questions of whether a national project is warranted with agreed definitions and methodologies to ensure public reporting is not misleading or confusing. Given the scope of the data referred to and the technological changes required, the State of NSW submits that it would not be possible to do so within 12 months.<sup>377</sup>

284. At Public hearing 7, Mr Potter described the Department's online platform for educational data and analysis, Scout, which brings together a range of data, including about suspensions. Mr Potter said at the time of the hearing that work was planned to allow for suspension data to be disaggregated by disability at the end of 2020.<sup>378</sup> NSW subsequently provided data to the Royal Commission on notice which does disaggregate suspension and expulsion data by disability, First Nations and culturally and linguistically diverse status.<sup>379</sup>
285. In its submissions, NSW also stated that data on the extent of denial or discouragement of enrolment of students with disability from mainstream education is not readily available.<sup>380</sup> Further, it stated that crossjurisdictional consultation and testing for data integrity and quality are necessary before reliable data could be published.<sup>381</sup>
286. In relation to incidents of bullying of students with disability, NSW stated that if a complaint of bullying is made there would 'certainly be some record and monitoring process' but it would be more complex when considering a requirement to 'record each and every incident'.<sup>382</sup>

## Queensland

287. Mr Lassig gave evidence that there is no state-wide data collected on bullying in Queensland.<sup>383</sup> Like NSW, Queensland submitted that it was unclear whether data collection about bullying should include only 'substantiated' or 'reported' complaints or all incidents of bullying.<sup>384</sup>
288. Queensland stated that the collection of meaningful and reliable data on bullying incidents would be challenging because the term 'bullying' is not currently defined in

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377 Submissions of the State of NSW, Public hearing 7, 18 May 2021, SUBM.0012.0001.0025, [114].

378 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [44].

379 Exhibit 7-218, NSW.9999.0037.0001, Response to Questions on Notice, State of NSW, 16 July 2021, at [9].

380 Submissions of the State of NSW, Public hearing 7, 18 May 2021, SUBM.0012.0001.0025, [107].

381 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [107].

382 Transcript, Gail Furness SC, Public hearing 7, 7 May 2021, P-521 [22–28].

383 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-449 [32–35].

384 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [22].

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legislation at either the State or Commonwealth level.<sup>385</sup> Queensland also expressed concerns that data collection in respect of bullying would be complicated by the fact that a student with disability may be both a complainant and a respondent to a complaint of bullying. That may occur where the student engages in behaviours of concern related to their disability.<sup>386</sup>

289. Mr Lassig stated that Queensland does not compile data on the extent and nature of restrictive practices in Queensland, but he understood there was a ‘build’ underway in OneSchool that would enable the recording of the use of restrictive practices.<sup>387</sup> At the time of Public hearing 7, Mr Lassig anticipated that reporting would be available from the beginning of 2021.<sup>388</sup>
290. We heard evidence at Public hearing 7 that part-time enrolment of students with disability is an informal method of discouraging and preventing enrolment. As noted above, under ‘Oversight & regulation’, Education Queensland guidelines do not require part-time programs of less than 10 weeks or informal part-time arrangements to be recorded in OneSchool.<sup>389</sup>
291. As such, there is a lack of data about these arrangements in Queensland. Mr Lassig gave evidence that Education Queensland does not know the number of students attending school on a part time basis across the Queensland education system.<sup>390</sup> He said that, as part of the response to the review, an audit of randomly selected schools was conducted to understand the scale of this problem in Queensland schools.<sup>391</sup>

### **General finding 3**

The NSW and Queensland state school systems do not routinely record and use data and information about incidents of denial or discouragement of enrolment, bullying, exclusionary discipline and restrictive practices experienced by students with disability.

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385 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [21].

386 Submission of the State of Queensland, Public hearing 7, 4 May 2021, SUBM.0013.0001.0001, [22].

387 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-451 [4–8].

388 Exhibit 7-174, STAT.0078.0001.0001, ‘Statement of Chris Lassig’, 25 March 2020, at [71].

389 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-450 [12–19].

390 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-450 [2–3].

391 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-449 [37–45].

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## Funding

292. Adjustments and supports are fundamental to facilitating the equal participation of people with disability in education. This is recognised by the concepts of reasonable accommodations and adjustments in the *CRPD* and the *DDA*.
293. Many adjustments and supports require funding to be properly implemented, as well as a degree of flexibility, recognising there is no ‘one size fits all’ formula.<sup>392</sup> General Comment No. 4 of the CRPD Committee notes that the provision of adjustments and supports should be based on an ‘evaluation of social barriers to education’.<sup>393</sup>
294. The Australian Government and state and territory governments share responsibility for funding the education of all students in Australia, including students with disability. Models for the distribution of funds operate differently in each jurisdiction.
295. Evidence presented at both Public hearings highlighted that some aspects of the current funding models may be creating additional barriers for students with disability to access education in mainstream settings.
296. For the purposes of this Report, we restrict consideration of this issue to the jurisdictions examined at Public hearing 7. However, it is evident that the issues are not confined to those jurisdictions and that the models used in other states and territories should be considered.

## Operation of funding models

297. Each jurisdiction has its own model for distributing funds for the education of students with disability, all with slightly different criteria for determining eligibility for and rates of funding.

## Australian Government funding

298. Australian Government education funding has undergone significant reform in the last 15 years. The 2011 Gonski *Review of Funding for Schooling* led to the adoption of the Schooling Resource Standard (SRS), which is the Australian Government’s estimate of how much total public funding a school needs to meet its students’ educational

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392 Transcript, ‘Alice’, Public hearing 7, 12 October 2020, P73 [31–36].

393 Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education*, UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [29].

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- needs.<sup>394</sup> Other significant developments in education funding for students with disability include:
- the establishment of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) in 2015
  - the adoption of the NCCD as the basis to calculate the SRS in 2018<sup>395</sup>
  - the 2019 Review of the Loading for Students with Disability.<sup>396</sup>
299. Under the *Australian Education Act 2013* (Cth) (*AE Act*), all schools are entitled to a 'base amount' of funding which is calculated using a set formula.<sup>397</sup> Schools receive loadings on top of this base amount for various categories of disadvantage, one of which is the 'students with disability' loading. This is calculated by reference to the estimated cost of providing reasonable adjustments to students with disability at each school.<sup>398</sup>
300. The calculation of this loading is informed by data obtained through the NCCD.<sup>399</sup> The NCCD requires schools from all sectors in all states and territories to report to Commonwealth agencies on the following:<sup>400</sup>
- The number of students receiving reportable categories of reasonable adjustments as a result of a disability, as these terms are defined in the *DDA*. There are four categories of NCCD adjustments: support provided within quality differentiated teaching practice; supplementary adjustments; substantial adjustments; and extensive adjustments.
  - For each student receiving adjustments, the type of function-based disability, which include cognitive, social/emotional, sensory and physical disabilities.
301. The implementation of the NCCD represented a significant shift away from a reliance on definitions of disability based on medical diagnoses to a system that focuses on the cost of adjustments required to meet student need.<sup>401</sup>

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394 Gonski, D., Boston, K., Greiner, K., Lawrence, C., Scales, B. & Tannock, P, *Review of Funding for Schooling* for the Australian Government Department of Education, Employment and Workplace Relations, Final Report, 2011.

395 National School Resourcing Board, *Review of the loading for students with disability*, Australian Government, Final Report, December 2019, p v.

396 National School Resourcing Board, *Review of the loading for students with disability*, Australian Government, Final Report, December 2019.

397 *Australian Education Act 2013* (Cth), s 33.

398 National School Resourcing Board, *Review of the loading for students with disability*, Australian Government, Final Report, December 2019, p v.

399 Transcript, Deborah Dunstone, Public Hearing 2, 7 November 2019, P-271 [33–37].

400 Exhibit 21, 'Statement of Deborah Dunstone', 14 October 2019, at [15].

401 National School Resourcing Board, *Review of the loading for students with disability*, Australian Government, Final Report, December 2019, p v.

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302. The data collected under the NCCD is used to calculate the funding provided by the Australian Government to the respective education system authorities in each state and territory. The authorities then distribute those funds to schools, using their own model for distribution.<sup>402</sup> For independent schools, the education system authority may be the school itself.<sup>403</sup> Within an individual school, funding is used at the discretion of the principal.<sup>404</sup>

## New South Wales funding

303. In NSW there are two main sources of state-based funding for students with disability in the government school system.

304. The first is the 'low level adjustment for disability equity loading' which is calculated by reference to NAPLAN data. This loading does not require a diagnosed disability. It is a general source of funding to enable mainstream schools to meet the learning needs of students with disability, for example through engaging additional, specialist teachers.<sup>405</sup>

305. The second source of funding is 'Integration funding support' (IFS). This is targeted, individual funding designed to support students with moderate to high learning needs, based on a confirmed diagnosis of disability.<sup>406</sup> IFS funding is used for additional teachers and school learning support officers to assist with personalised learning and support, and provide relief for classroom teachers to undertake professional learning and plan for adjustments.<sup>407</sup>

306. Mr Potter stated that:<sup>408</sup>

IFS specifically supports students who are enrolled in a mainstream class (not a support class) in a mainstream school who:

(a) meet the Department's Disability Criteria, which has the following categories of disability: moderate to severe intellectual disability, physical disability, mental health disorder, autism, hearing and/or vision impairment;

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402 Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, p 42.

403 *Education Act 2013* (Cth), s 73 enables the approval of a person as the approved authority.

404 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020 at [45]; Transcript, Frank Potter, 13 October 2020, P-165 [13–15], P-168 [34–35].

405 NSW Department of Education, *Low level adjustment for disability*, Web page, 4 May 2020 <<https://education.nsw.gov.au/public-schools/schools-funding/resource-allocation-model/equity-loadings/low-level-adjustment-for-disability>>; Exhibit 786, 'Statement of Frank Potter', 7 October 2020 at [81].

406 Exhibit 786, 'Statement of Frank Potter', 7 October 2020 at [86, 88(a)].

407 NSW Department of Education, *Integration funding support*, Web page, 20 August 2021, <<https://education.nsw.gov.au/teaching-and-learning/disability-learning-and-support/programs-and-services/integration-funding-support>>

408 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [88].

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- (b) need adjustments to access learning opportunities and school experiences; and
  - (c) have moderate to high learning and support needs requiring additional resources to those available in school to personalise learning and support.

307. In 2020, NSW recorded that over 11,000 eligible students with confirmed disability and moderate-to-high support needs received IFS support in mainstream classes.<sup>409</sup>

## Queensland funding model

308. In Queensland government schools, the key funding model for students with disability is the Education Adjustment Program (EAP). Data collected under the EAP about verified disability is used to calculate the funding provided to schools.<sup>410</sup> The EAP funding is used to provide additional teachers and teacher aides.<sup>411</sup>

309. The EAP identifies students with disability under the following categories:<sup>412</sup>

- Autism Spectrum Disorder
- Hearing impairment
- Intellectual disability
- Physical impairment
- Speech-language impairment
- Vision impairment.

310. The position of Education Queensland is that the NCCD and EAP schemes align 'around students that require the most need'.<sup>413</sup> However, in Queensland, 18.3 per cent of students require adjustments according to the NCCD<sup>414</sup> but only about 6 per cent of students have EAP verifications.<sup>415</sup>

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409 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [77].

410 Transcript, Deborah Dunstone, Public Hearing 2, 7 November 2019, P-273 [24–25]; Exhibit 21, 'Statement of Deborah Dunstone', 14 October 2019, at [19].

411 Exhibit 21, 'Statement of Deborah Dunstone', 14 October 2019, at [24].

412 <https://education.qld.gov.au/student/Documents/eap-handbook.pdf#search=eap>, at p 13–30.

413 Transcript, Deborah Dunstone, Public hearing 2, 7 November 2019, P-273 [6–7].

414 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-426 [32]; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive Education in Queensland—Preliminary Inquiry*, October 2020, [188].

415 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-426 [37]; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive Education in Queensland—Preliminary Inquiry*, October 2020, [194].

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## Funding-related barriers to education

311. Eligibility for funding in Queensland and NSW, by reference to a specific, ‘diagnosed’ category of disability, can create barriers to access to education for students who do not fall within these categories. It can also put pressure on parents of students with disability to seek out a particular diagnosis in order to ensure that their child is able to access targeted funding for reasonable adjustments.
312. Individual funding – or lack of – can contribute to denial or discouragement of enrolment to students with disability. In the 2020 DSE Review, parents and carers told the Review that some schools referred to their children as having an ‘unfunded’ disability, which contribute to instances of gatekeeping or reasonable adjustments not being provided.<sup>416</sup>
313. Advocates who gave evidence at Public hearing 7 described similar concerns. Ms Haythorpe said she often felt that schools could not access additional funding or supports for students who had experienced exclusion, and who had undiagnosed disabilities ‘which did not fall within EAP parameters’.<sup>417</sup> She believed this made the schools resistant to enrolling these students.<sup>418</sup>
314. Dr de Bruin said that ‘students who may have more substantial needs and who seek enrolment in their local mainstream school’ may be told:
- Look, we don’t really get the resources to give you a good education here, I strongly recommend you go to the special school up the road where they have allied health professionals and smaller classes.<sup>419</sup>
315. Funding models can also present barriers to students with disability receiving the reasonable adjustments they need to access education.
316. Dr de Bruin said the definitions of disability relied on by states and territories to allocate funding create a ‘support gap’ for students whose diagnoses do not fit approved categories for funding. She said that this may also be true of students who do not demonstrate sufficient levels of impairment to meet eligibility criteria.<sup>420</sup>
317. We heard evidence at Public hearing 2 that the NCCD records a significantly larger number of students with disability than the EAP.<sup>421</sup> This indicates that there may be

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416 Australian Department of Education, Skills and Employment, *Disability Standards for Education 2005: 2020 Review*, Final Report, 2020, p 42.

417 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [33].

418 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [30].

419 Transcript, Kate de Bruin, Public hearing 7, 14 October 2020, P-238 [40–45].

420 Exhibit 7-113, ‘Statement of Kate de Bruin’, 28 September 2020, at [156].

421 Exhibit 2-1, ‘Statement of Deborah Dunstone’, 14 October 2019, at [12], [26].

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students with disability in Queensland who would benefit from EAP support but who do not seek or are unable to seek verification under the EAP.

318. This can lead to schools encouraging families to seek out particular diagnoses to be eligible for funding, as was the case for Jack and his parents. As explained earlier in the Report, Sharon said that because Jack did not have a ‘top six’ diagnosis to bring him within a defined EAP category, she was told by his school that there was no funding available to help him.<sup>422</sup> Sharon said that ‘as a potential solution, the school:

strongly suggested that we take Jack back to the doctors to get him diagnosed with autism as well, because then they would give us funding for a teacher’s aide and then they would help us.<sup>423</sup>

319. When the psychologist told Sharon she was unable to ‘tick the box’ required for funding, because Jack did not have autism, Sharon broke down in tears because she believed she had lost the only opportunity to obtain support for her son’.<sup>424</sup>
320. Exacerbating these issues is the perception of some teachers and schools that funding is a prerequisite to receiving adjustments. For example, Ms Haythorpe said that in her experience, students with complex behavioural disorders or mental health diagnoses would not obtain support if they did not also fit into one or more of the EAP categories.<sup>425</sup>
321. However, all students with disability are entitled to receive reasonable adjustments in accordance with the *DDA*.<sup>426</sup> Mr Lassig confirmed this in the hearing. In evidence he said that ‘regardless of whether a student has a verified disability in the EAP’ they should receive adjustments, and that Queensland Education’s inclusion policy makes clear ‘that all students should be provided the adjustments they need to access and succeed in the curriculum ... a lot of the adjustments we talk about don’t require additional resources’.<sup>427</sup>
322. He accepted that in the past, students without an EAP verification sometimes received less support than their EAP-verified peers.<sup>428</sup> He also agreed that, although there should be no distinction between students with disability with an EAP verification and those without, that distinction ‘may still play out’.<sup>429</sup>

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422 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [28].

423 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [28].

424 Exhibit 7-117, ‘Statement of ‘Sharon’’, 25 February 2020, at [29].

425 Exhibit 7-167, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [10], [15].

426 *Disability Discrimination Act 1992* (Cth), s 4.

427 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-428 [31–47], P-429 [9–10].

428 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-426 [4–8].

429 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-426 [4–20].

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323. Mr Lassig further conceded that, based on the disparities in the NCCD and EAP data sets, there is ‘a huge difference’ between students with EAP verification and those who actually need adjustments.<sup>430</sup> He stated that it was ‘not good enough’ that Sharon and Alex had to spend a lot of money to try to get a diagnosis to fit Jack within the EAP.<sup>431</sup>
324. Mr Lassig said that he did not know why the Queensland Government used the EAP verification process,<sup>432</sup> given that disability support is intended to be provided irrespective of verification status under a particular category.
325. Amy and Sarah discussed how the amount of funding available to the school determined the level of support provided to Sam and Kobe, rather than in accordance with the level of support they needed to participate in education. When Sarah suggested ways in which Kobe’s school could reinforce positive behaviour, these were rejected on the basis that the school did not have the funding.<sup>433</sup>
326. Amy said that the number of hours of teacher’s aide support provided to Sam was limited to the funding available to him under the IFS. This meant that a teacher’s aide was only available in the mornings – even though Sam often absconded from school in the afternoons.<sup>434</sup> In his evidence, Mr Potter said that teacher’s aide support is not necessarily tied to the amount of funding a student receives and that schools have discretion in terms of how funding is used.<sup>435</sup>

## Area for further inquiry

327. Resourcing models that are reliant on a particular diagnosis have the potential to create, rather than remove, barriers to education for students with disability.

### Area for further inquiry

The Royal Commission will consider further approaches to funding for students with disability across all jurisdictions. This will include how to ensure that funding does not create additional barriers to students with disability to access safe, quality, inclusive education.

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430 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-426 [24–43].

431 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-433 [35].

432 Transcript, Frank Potter, Public hearing 7, 16 October 2020, P-431 [46]–P432 [10].

433 Exhibit 7-89, ‘Statement of ‘Sarah’’, 23 July 2020, at [59].

434 Transcript, Commissioner Ronald Sackville, Public hearing 7, 13 October 2020, P-107 [29–31].

435 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-166 [41–46].

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# Part 6: Findings and further inquiries

## Findings

328. The following findings are made in this Report:

### Findings in relation to Sam's case

#### **Sam's case Finding 1**

The process followed by the NSW Department in its 16 November 2016 appeal decision in regards to Sam's suspension was defective because the decision-maker:

- was not aware of the number of suspensions to which Sam had been subjected since the start of his school life;<sup>436</sup>
- did not make available to Amy the response of the school disputing the version of events that she had put forward, even though they could have done so;<sup>437</sup>
- did not consider whether necessary adjustments had been put in place prior to each suspension; and<sup>438</sup>
- paid insufficient attention to the indicative timeframe for making the decision.<sup>439</sup>

#### **Sam's case Finding 2**

Sam's school inappropriately identified 'restraint' as a reasonable adjustment provided to Sam.

#### **Sam's case Finding 3**

The suspensions of 20 days' duration were inappropriate having regard to Sam's age, disability, stage of education and other needs.<sup>440</sup>

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436 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-174 [2-6].

437 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-174 [27-29].

438 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-154 [47]-P-155 [16].

439 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-137 [39-43].

440 Submission of the State of NSW, Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, [60].

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#### **Sam's case Finding 4**

The NSW Suspension and Expulsion Procedures were applied to Sam rigidly and without due regard in each instance to his disability. The procedures applied in this way had the potential to disproportionately impact students with disability.

#### **Sam's case Finding 5**

Sam was inappropriately subject to repeated suspensions from school, which prevented him from receiving a safe, quality and inclusive education.

## **General Findings**

#### **General finding 1**

The evidence given by Queensland and NSW about their respective reasonable adjustment policies indicate that, ultimately, the provision of reasonable adjustments is largely left to the judgment and discretion of educators, with little departmental oversight.

#### **General finding 2**

There has been insufficient progress towards addressing the lack of regulation of restrictive practices in education settings in Australia which, coupled with the absence of a clear, agreed definition of what constitutes a 'restrictive practice', places children with disability at significant risk of harm.

#### **General finding 3**

The NSW and Queensland state school systems do not routinely record and use data and information about incidents of denial or discouragement of enrolment, bullying, exclusionary discipline and restrictive practices experienced by students with disability.

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## Further inquiries

329. The Royal Commission has identified the following areas for further inquiry arising out of the evidence at Public hearing 7:

### Area for further inquiry

- The Royal Commission will consider further the different understandings of Article 24 of the *CRPD*, the meaning of ‘inclusive education’ and how promoting and achieving inclusive education should be measured and monitored over time.
- The Royal Commission will consider further the ways in which education systems should protect the inherent dignity and value of students with disability, in particular by preventing them from being bullied. We will also consider the role that education plays in shaping broader community attitudes towards people with disability.
- The Royal Commission will consider further measures that build the skills of educators in supporting students with disability, including awareness of the *DDA* and *DSE*, implementation of reasonable adjustments, and responding to behaviours of concern.
- The Royal Commission will consider ways to strengthen and more effectively enforce obligations of educators in respect of enrolment of students with disability, as set out in the *DDA* and *DSE*.
- The Royal Commission will further consider mechanisms by which the obligations to make reasonable adjustments, as set out in the *DDA* and *DSE*, could be strengthened and more effectively enforced, including improving awareness and understanding of these obligations among educators.
- The Royal Commission will give further consideration to the policy and regulatory levers available to address the disproportionate use of exclusionary discipline against students with disability, particularly in respect of First Nations students with disability and very young children with disability.
- The Royal Commission will consider further how the term ‘restrictive practice’ should be defined in an education setting and what regulation of restrictive practices is needed to ensure the safety of students with disability. This will include consideration of past recommendations that these practices should be prohibited altogether.

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- The Royal Commission will request that NSW provide an overview of the actions it has taken in response to the recommendations of the NSW Ombudsman's 2017 *Inquiry into behaviour management in schools: Final report*.
  - The Royal Commission will consider further approaches to funding for students with disability across all jurisdictions. This will include how to ensure that funding does not create additional barriers to students with disability to access safe, quality, inclusive education.

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# Part 7: Appendices

## Appendix A: Witnesses who gave evidence at the hearing

330. The witnesses gave their evidence at Public hearing 7 in the following order:

### Quaden and Yarraka Bayles

331. Quaden Bayles is a First Nations boy who at the time of the hearing was undertaking Year 4 at a public, mainstream, primary school in Queensland.<sup>441</sup> He was 9 years old when he gave evidence. Quaden has Achondroplasia, which is a type of dwarfism.<sup>442</sup> He has a range of health-related issues and challenges.<sup>443</sup> The pre-recorded oral evidence of Quaden, dated 10 September 2020, was played at Public hearing 7 on 12 October 2020.<sup>444</sup>

332. Quaden's mother, Yarraka Bayles, also appeared as a witness. She is a First Nations woman and works as a workshop facilitator and tour guide for a First Nations run and owned organisation in Brisbane.<sup>445</sup> Ms Bayles provided a written statement to the Royal Commission dated 24 September 2020.<sup>446</sup> Ms Bayles appeared and gave evidence in person at Public hearing 7 on 16 October 2020.

### Michelle O'Flynn and Nikki Parker (Queensland Advocacy Incorporated)

333. Ms O'Flynn and Ms Parker provided a joint written statement to the Royal Commission and gave oral evidence in a panel with other advocates on 12 October 2020. Ms O'Flynn is Queensland Advocacy Incorporated's (QAI) Director and Systems Advocacy Director.<sup>447</sup> She has been a Director of QAI since 2014 and is the parent of a daughter with disability.<sup>448</sup> At the time of Public hearing 7, Ms Parker was QAI's Education Advocate responsible for QAI's Education Advocacy Service.<sup>449</sup> She has also worked as a local government lawyer and is the parent of a son with disability.<sup>450</sup>

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441 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [16], [19], [45], [52].

442 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [21].

443 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [22] and [28].

444 Exhibit 7-02, IND.0054.0001.0003; Exhibit 7-03, IND.0054.0001.0003.

445 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [5–6].

446 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020.

447 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [3].

448 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [9], [11].

449 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [3].

450 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [18], [19].

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334. QAI is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability and mental health issues.<sup>451</sup> QAI has worked with parents of students with disability in both state and private school settings over a number of years.<sup>452</sup> QAI provides a separate Education Advocacy Service which currently supports state school students and home schooled students as it is presently funded by Education Queensland.<sup>453</sup>
335. Ms Parker and Ms O'Flynn gave evidence based on their experiences of students with disability of exclusions, adjustments (or lack thereof), the use of restrictive practices and other barriers to accessing and obtaining a quality education. Their evidence also considered the impacts of these barriers on the life course and mental health of students with disability.

## Mary Sayers (Children and Young People Australia)

336. Ms Sayers provided a written statement to the Royal Commission on 24 September 2020 and gave evidence in a panel with other advocates on 12 October 2020. She is the Chief Executive Officer of Children and Young People Australia (**CYDA**) and has held that role since July 2019.<sup>454</sup> CYDA is a not-for-profit national representative organisation for children and young people with disability.<sup>455</sup> Ms Sayers also gave evidence to the Royal Commission at Public hearing 5.<sup>456</sup>
337. Ms Sayers is the parent of a child with disability and has worked in research, policy and advocacy for over 20 years.<sup>457</sup> She also sits on many national advisory groups and steering committees and convenes a number of national coalitions made up of disability advocacy organisations and people with disability.<sup>458</sup> This includes acting as Chair and co-convenor of the Australian Coalition of Inclusive Education (ACIE).<sup>459</sup> Prior to working at CYDA, Ms Sayers worked at the Victorian Council of Social Service as Deputy Chief Executive Officer.<sup>460</sup>

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451 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [21].

452 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [23].

453 Exhibit 7-06, 'Joint Statement of Michelle O'Flynn and Nikki Parker', 23 September 2020, at [21].

454 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [5].

455 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [10].

456 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 5: Experiences of people with disability during the ongoing COVID-19 pandemic*, November 2020 at [23].

457 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [5–6].

458 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [21].

459 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [21].

460 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [7].

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338. Ms Sayers gave evidence on a number of issues as they relate to the education of children and young people with disability and the barriers they face in accessing a safe, quality and inclusive education. Her evidence considered the personal experiences of students and their families as reported to CYDA through its work, including CYDA's annual national surveys and case studies developed from interviews with young people and their families.
339. As explained in Ms Sayer's written statement, CYDA has conducted five national education surveys since 2015.<sup>461</sup> These surveys have aimed to obtain information on the educational experiences of students with disability.<sup>462</sup> There were 505 young people with disability and their families who responded to CYDA's 2019 National Education Survey with representation from all states and territories, all age groups and from metropolitan, regional, rural and remote Australia.<sup>463</sup> The data was analysed by CYDA and released in October 2019 in CYDA's report – *Time for Change: The state of play for inclusion for students with disability*.<sup>464</sup>
340. Ms Sayers also gave evidence as to some resulting impacts on the life course and mental health of students with disability who have experienced barriers in their education. She also provided the Royal Commission with CYDA's recommendations for change. These recommendations are set out in the paper developed by ACIE – *Driving Change: A roadmap for achieving inclusive education in Australia*.<sup>465</sup> The *Roadmap* has been endorsed by over 30 organisations which collectively represent tens of thousands of children and young people with disability and their families across Australia.<sup>466</sup>

## Cecile Elder (Family Advocacy)

341. Ms Elder provided a written statement to the Royal Commission and gave oral evidence in a panel with other advocates on 12 October 2020. Ms Elder is the Executive Officer of Family Advocacy. She had held that role for five-and-a-half years at the time of providing her statement to the Royal Commission.<sup>467</sup> Ms Elder has worked in many roles in the disability sector for approximately 28 years. This includes acting as Chief Executive Officer of Post-School Services for People with Disability at FOCAS Shoalhaven Incorporated for approximately 12 years.<sup>468</sup> She has also taught

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461 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [17].

462 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [25].

463 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [26].

464 Exhibit 7-07.08, 'Statement of Mary Sayers', 24 September 2020, at [27].

465 Exhibit 5-28.31, 'Statement of Mary Sayers', 24 September 2020, at [143].

466 Exhibit 7-07, 'Statement of Mary Sayers', 24 September 2020, at [143].

467 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [5].

468 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [6].

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Disability Studies through TAFE NSW and holds a Bachelor of Applied Science in Disability Studies from Deakin University.<sup>469</sup>

342. Family Advocacy is a NSW based disability advocacy organisation that works to protect the rights and interests of people with disability across NSW.<sup>470</sup> Family Advocacy's core work involves providing state-wide advocacy advice, support and advocacy leadership development to families.<sup>471</sup> Family Advocacy has worked with the NSW Government and has been funded by the NSW Government over many years to provide advocacy advice, information and support for families in NSW.<sup>472</sup> Much of Family Advocacy's work is based on need and focuses on families and children with experiences in government schools, as well as Catholic and independent schools.<sup>473</sup> Family Advocacy is a member of ACIE.<sup>474</sup>
343. Ms Elder gave evidence on a number of issues as they relate to students with disability and their transition to higher education, training and employment. Her evidence reflected on the education of students with disability from a historical perspective, recognising the importance of acknowledging that background for understanding the values, beliefs and assumptions that continue to drive the experiences of people with disabilities today.<sup>475</sup> Ms Elder's evidence also considered the resulting impacts on the life course and mental health of students with disability who have experienced barriers in their education and provided recommendations for change for consideration by the Royal Commission.

## Dr David Armstrong

344. Dr David Armstrong is a Senior Lecturer in Inclusive and Special Education and Program Manager of the Bachelor of Education (Primary) at RMIT University.
345. Dr Armstrong's expertise involves special and inclusive education and developmental psychology. In particular, he has conducted research on how teachers can more effectively and ethically respond to student behaviours, including students at risk of mental health difficulties.
346. Dr Armstrong provided a written statement dated 16 September 2020 and gave oral evidence on 12 October 2020.<sup>476</sup> His evidence focused on the consequences

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469 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [7].

470 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [8].

471 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [9].

472 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [144].

473 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [9], [144].

474 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [12].

475 Exhibit 7-08, 'Statement of Cecile Elder', 28 September 2020, at [25].

476 Exhibit 7-07, Statement of David Joseph Armstrong, 16 September 2020.

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of common approaches to responding to student behaviours of concern. He told the Royal Commission how different approaches to behavioural interventions could be used to more appropriately assist students with disability in the classroom. In particular, he gave evidence about the Positive Behaviour Interventions and Supports model and how it seeks to understand the function of student behaviour and provide appropriate interventions based on student needs. He also discussed the role of Functional Behavioural Assessments.

347. Dr Armstrong also discussed the limited role that suspension and exclusionary discipline can play in managing students' behaviours of concern. He provided suggestions about methods to reduce teachers' occupational stress, to enhance teachers' ability to create the positive educational experience necessary to ensure better outcomes for students with disability in the classroom.

## 'Sam' and 'Amy'

348. 'Amy' provided a written statement dated 25 September 2020<sup>477</sup> and gave oral evidence on 13 October 2020 via videolink about the education of her 10-year-old son 'Sam'.<sup>478</sup> She explained that Sam has been diagnosed with a number of conditions, including autism spectrum disorder, a sensory processing disorder and generalised anxiety disorder of childhood.<sup>479</sup> A short pre-recorded video of Sam, talking about school,<sup>480</sup> was also played at the hearing.<sup>481</sup>

## Frank Potter

349. Mr Potter has held the position of Executive Director, School Performance, at the NSW Department since 2013.<sup>482</sup> At the time of the hearing, Mr Potter had been employed by the NSW Department for nearly 38 years.<sup>483</sup>
350. Mr Potter gave his evidence on behalf of the NSW Department.<sup>484</sup> He provided a written statement in response to a request by the Royal Commission,<sup>485</sup> and gave oral evidence on 13 October 2020.

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477 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020.

478 The names and any identifying information of Amy and Sam are the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051). Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they were referred to as 'Amy' and 'Sam'.

479 Exhibit 7-12, 'Statement of 'Amy'', 25 September 2020, at [13–14].

480 The name of the government school attended by Sam is the subject of a nonpublication direction that was made by the Royal Commission (CTH-DNP-00053).

481 Transcript, Amy, Public hearing 7, 13 October 2020, P-128 [32–34].

482 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [1].

483 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [10].

484 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [2].

485 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020.

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351. Mr Potter gave general evidence about the use of suspensions,<sup>486</sup> the implementation of adjustments, and the funding available, for students with disability in NSW government schools.<sup>487</sup> He also provided information to the Royal Commission about the NSW Government's draft Student Behaviour Strategy.<sup>488</sup>
352. Mr Potter also gave evidence about the NSW Department's approach to 'Sam's' case, and his own involvement in an appeal and review of suspensions that Sam had received.<sup>489</sup>

## 'Sarah' and 'Kobe'

353. 'Sarah' provided a written statement on 19 August 2020 and gave oral evidence on 14 October 2020 about the schooling experiences of her son 'Kobe'.<sup>490</sup> Sarah stated that Kobe has 'serious and complex disability needs'.<sup>491</sup> He was diagnosed at age 4 with high functioning autism spectrum disorder (later reclassified as Level 3) and attention deficit hyperactivity disorder. He also has severe anxiety and depression, a sensory processing disorder, a speech language disorder, eosinophilic oesophagitis, mild dysgraphia and has been percutaneous endoscopic gastrostomy fed since he was two years old.<sup>492</sup>
354. At the time of Sarah's appearance, Kobe was 16 years old and not attending school. Kobe also told the Royal Commission about his school experiences through a pre-recorded audio statement.

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486 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [14–46].

487 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [14–97].

488 Exhibit 7-86, 'Statement of Frank Potter', 7 October 2020, at [98–106].

489 Exhibit 7-12.49, IND.0040.0001.0150.

490 The names and any identifying information of Sarah and her son Kobe are the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051). Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they are identified through the pseudonyms 'Sarah' and 'Kobe' for the purposes of Public hearing 7.

491 Exhibit 7-089, 'Statement of "Sarah"', 23 July 2020, at [4].

492 Exhibit 7-089, 'Statement of "Sarah"', 23 July 2020, at [9].

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## Dr Kate de Bruin

355. Dr Kate de Bruin is a Senior Lecturer in inclusion and disability within the Faculty of Education at Monash University.<sup>493</sup> Prior to her time at Monash University, Dr de Bruin was a classroom English teacher for 10 years.<sup>494</sup> She made a written statement to the Royal Commission on 28 September 2020 and gave oral evidence on 14 October 2020.
356. Dr de Bruin's evidence to the Royal Commission focused on the provision of reasonable adjustments for students with disability, including the way reasonable adjustments are identified, planned and provided, the extent to which teacher education includes the provision of reasonable adjustments and how those adjustments are funded.

## Associate Professor Shiralee Poed

357. Associate Professor Shiralee Poed is an Associate Professor in the School of Early Childhood and Inclusive Education at Queensland University of Technology and an Honorary Principal Fellow of the Melbourne Graduate School of Education at the University of Melbourne.<sup>495</sup> She is also the Chair and a Director of the Association for Positive Behaviour Support Australia.<sup>496</sup>
358. Associate Professor Poed's research focuses on how to make schools more inclusive, including improved access and participation for students with disability.<sup>497</sup> She has undertaken research into the inadequacies of Australian legislation and policy regarding students with disability, educational interventions and practices used in schools (particularly in behaviour management), and how courts have determined the 'reasonableness' of adjustments.<sup>498</sup> This includes considering the operation of the *DDA* and the *DSE*. Her doctoral research considered the meaning of a 'reasonable' adjustment to curriculum, through examining 134 Australian cases about disability discrimination in education dated from 1992 to 2014.<sup>499</sup>
359. Associate Professor Poed provided a written statement dated 25 September 2020 and gave oral evidence on 14 October 2020.<sup>500</sup> Her evidence concerned adjustments for school students with disability and the use of restrictive practices in schools.

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493 Exhibit 7-113, 'Statement of Kate de Bruin', 28 September 2020, at [4].

494 Exhibit 7-113, 'Statement of Kate de Bruin', 28 September 2020, at [8]; Transcript, Kate de Bruin, Public hearing 7, 14 October 2020, P223 [11–18].

495 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [6].

496 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [11].

497 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [16].

498 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [16–21].

499 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [73].

500 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020.

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Associate Professor Poed considered that a key aspect to address barriers to the inclusion of students with disability in mainstream schools is the provision of appropriate adjustments.<sup>501</sup>

## 'Jack', 'Sharon' and 'Alex'

360. 'Jack' is a young man who lives with Tourette syndrome, ADHD, obsessive compulsive disorder, a number of anxiety disorders and depression. Jack has not participated in any education since early high school.<sup>502</sup> Jack's parents, 'Alex' and 'Sharon', both provided written statements to the Royal Commission dated 24 and 25 February 2020 and gave oral evidence via video-link on 15 October 2020.<sup>503</sup> Jack, who was 18 years old at the time of the hearing, provided pre-recorded evidence which was played during the hearing.<sup>504</sup>

## Lesley Theodore

361. Ms Theodore gave evidence in her capacity as a Principal Education Officer (PEO) at Education Queensland. She gave oral evidence on 15 October 2020 and provided a written statement to the Royal Commission dated 25 March 2020 in response to a Notice to Give Information.<sup>505</sup>
362. Ms Theodore's oral evidence covered the role of PEOs, the funding provided by the Queensland Government to support students with disability and how she tries to deal with situations where she believes a school is not providing appropriate supports to students with disability.
363. Ms Theodore also provided evidence about her experience of the implementation of Education Queensland's new 'Part-time Educational Program Guidelines' and her experience of students with disability being restricted in their ability to attend school full time.
364. Although Ms Theodore was involved in assisting Jack, Sharon and Alex when Jack was at school, this was not the primary focus of her evidence at the hearing.

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501 Exhibit 7-114, 'Statement of Shiralee Poed', 25 September 2020, at [71].

502 Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020, at [69].

503 Exhibit 7-116, 'Statement of 'Alex'', 24 February 2020; Exhibit 7-117, 'Statement of 'Sharon'', 25 February 2020.

504 Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they were referred to as 'Jack', 'Sharon and 'Alex'. Additionally Jack's surname, images of Jack and the names of state schools he attended are the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051).

505 Exhibit 7-164, 'Statement of Lesley Theodore', 25 March 2020.

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## Emma Haythorpe

365. Ms Haythorpe started working as a Senior Guidance Officer (SGO) for Education Queensland in 2017.<sup>506</sup> She ceased working for Education Queensland in August 2017 due to what she ‘perceived to be a failure by the schools to accept children with challenging behaviours into their schools’.<sup>507</sup>
366. Ms Haythorpe provided a written statement dated 11 March 2020 and gave oral evidence on 15 October 2020.<sup>508</sup> She told the Royal Commission that in her experience, students who did not fall within one of the six categories of the Educational Adjustment Program (EAP), such as those with complex behavioural disorders or mental health diagnosis, did not receive support.<sup>509</sup> Her evidence was ‘those students would have complex needs that would never be met, which means they would have complex behaviours, which would then lead to expulsion’.<sup>510</sup>
367. Ms Haythorpe stated that in her experience, principals had ‘a substantial degree of individual discretion’ regarding a student’s expulsion.<sup>511</sup> Ms Haythorpe told the Royal Commission that in her view, school responses to re-enrolment requests after a student has been expelled showed trends of delay, refusal and acceptance of enrolment on a conditional basis only.<sup>512</sup>
368. Ms Haythorpe told the Royal Commission that she hopes a wider range of disabilities and disorders will be recognised by Queensland schools as requiring funding and support to allow students to ‘easily and seamlessly access their rights to education in a mainstream setting’.<sup>513</sup> She also told the Royal Commission that there should be greater flexibility in the approach to education of students with disability in the future.<sup>514</sup>

## Ann Howlett

369. Ms Howlett worked for Education Queensland for approximately 38 years.<sup>515</sup> She was a teacher in the Behaviour Management Alternative Education Program, a Guidance Officer for 10 years, a Senior Adviser and Principal Adviser for students with disability

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506 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [4e].

507 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [4e].

508 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020.

509 Transcript, Emma Louise Haythorpe, Public hearing 7, 15 October 2020, P-352 [37]–P-353[1].

510 Transcript, Emma Louise Haythorpe, Public hearing 7, 15 October 2020, P-353[1–7].

511 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [24].

512 Transcript, Emma Louise Haythorpe, Public hearing 7, 15 October 2020, P-356 [46]–P-357 [28].

513 Exhibit 7-165, ‘Statement of Emma Louise Haythorpe’, 11 March 2020, at [38].

514 Transcript, Emma Louise Haythorpe, Public hearing 7, 15 October 2020, P-357 [30–39].

515 Transcript, Ann Howlett, Public hearing 7, 15 October 2020, P-338 [7].

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for five years and an SGO for the five years that preceded her retirement.<sup>516</sup> She gave oral evidence on 15 October 2020 and provided a written statement to the Royal Commission dated 27 March 2020 in response to a Notice to Give Information.<sup>517</sup>

370. Ms Howlett gave evidence that in her capacity as an SGO she regularly advised schools about how best to work with students with challenging behaviours and disabilities,<sup>518</sup> conducted cognitive assessments for an EAP verification of intellectual disability and speech-language impairment, and provided detailed support for students who had been excluded from the Queensland state education system.<sup>519</sup>
371. Ms Howlett's evidence focused on the difficulties faced by students with disability and their families once they received notification that they were going to be expelled, the impacts of the expulsion on those students and the complexities of finding an appropriate educational setting for re-enrolment.

## Professor Linda Graham

372. Professor Graham is a Professor in the School of Early Childhood and Inclusive Education at Queensland University of Technology, and the Director of the Centre for Inclusive Education at Queensland University of Technology.
373. Professor Graham's research focus is the role of education policy and practices in the development of disruptive student behaviour and the improvement of responses to student learning and behavioural difficulties.<sup>520</sup> She has conducted numerous projects about the inclusion and exclusion of school students in the 'grey zone', being students with disability that are not eligible for individually targeted disability support funding but who still experience significant difficulties with school.<sup>521</sup>
374. Professor Graham provided a written statement dated 27 September 2020 and gave oral evidence on 15 October 2020.<sup>522</sup> Her evidence concerned the inappropriate use of 'exclusionary discipline' against school students with disability including suspensions, expulsions and exclusions.<sup>523</sup>
375. Professor Graham's evidence detailed the types of informal and formal exclusions used in schools, why she considers them to be an ineffective response to behaviours

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516 Transcript, Ann Howlett, Public hearing 7, 15 October 2020, P-338 [21–24].

517 Exhibit 7-166, 'Statement of Ann Howlett', 27 March 2020.

518 Exhibit 7-166, 'Statement of Ann Howlett', 27 March 2020, at [7], [9].

519 Exhibit 7-166, 'Statement of Ann Howlett', 27 March 2020, at [10].

520 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [6].

521 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [8].

522 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020.

523 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [38a].

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that impact learning, and how suspensions can escalate over time into a long-term denial of education. She discussed the current regulatory framework governing exclusions, the drivers of exclusionary discipline in schools, the overrepresentation of students with disability, the adverse impacts, and better responses to disruptive or disengaged behaviour.

## Maria Scharnke

376. At the time of her appearance, Ms Scharnke was a 17-year-old school student undertaking Year 12 at St Francis College, an independent Catholic school in Queensland.<sup>524</sup> Ms Scharnke told the Royal Commission that autism is a fundamental part of her identity.<sup>525</sup> Ms Scharnke is a person with motor dyspraxia, auditory processing disorder, chronic fatigue, ADHD and a learning disorder in mathematics.<sup>526</sup> Ms Scharnke provided a written statement to the Royal Commission dated 21 April 2020<sup>527</sup> and gave oral evidence on 16 October 2020.

## Chris Lassig

377. Mr Lassig gave evidence on behalf of Education Queensland.<sup>528</sup> At the time of the hearing he was employed as the Assistant Regional Director, North Coast Region, at Education Queensland and was the Executive Director of the Disability and Inclusion Branch between January 2016 and September 2018.<sup>529</sup> In that role, he established Education Queensland's Autism Hub and Reading Centre in partnership with other colleagues and stakeholders.<sup>530</sup> He has worked extensively within Education Queensland since 1992.<sup>531</sup>
378. Mr Lassig provided a written statement in response to a Notice to Give Information dated 6 March 2020,<sup>532</sup> and gave oral evidence on 16 October 2020.
379. Mr Lassig gave evidence about the supports available for students with disability in Queensland state schools, Education Queensland's policies and procedures relating to students with disability, including EAP categories, the provision of adjustments and

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524 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [3].

525 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [7].

526 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020, at [7].

527 Exhibit 7-168, 'Statement of Maria Rachel Scharnke', 21 April 2020.

528 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-407 [28–31].

529 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020, at [3], [5].

530 Transcript, Chris Lassig, Public hearing 7, 16 October 2020, P-409 [31–32].

531 Exhibit 7-174.02, QLD.9999.0048.0011.

532 Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020 at [1]. Mr Lassig's witness statement repeats and relies on the statement of Ms Deborah Dunstone tendered in Public hearing 2: Exhibit 201, 'Statement of Deborah Dunstone', 14 October 2019 (Exhibit 7-174, 'Statement of Chris Lassig', 25 March 2020 at [2]).

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school resourcing, and the training and professional development of staff working with students with disability. Mr Lassig also gave evidence relating to the suspension and exclusion of students with disability, Education Queensland's approach to supporting student behaviour and the use of restrictive practices.

380. The following witnesses did not provide oral evidence at Public hearing 7, and instead provided the Royal Commission with written or video evidence.

## 'Leif'

381. 'Leif',<sup>533</sup> a young person with autism, auditory processing disorder and motor impairment, provided a written statement dated 13 March 2020 about their experiences in primary and secondary state schools.<sup>534</sup> Leif did not wish to appear to give evidence at the hearing. Leif uses gender neutral pronouns.

## 'Alice'

382. 'Alice' is a student living with disability who also shared her personal experience with the Royal Commission.<sup>535</sup> At the hearing, a video of Alice speaking at the National Youth Disability Summit was played and admitted into evidence.<sup>536</sup>

## Dr Lee Sturgeon

383. Dr Sturgeon is a consultant clinical and developmental psychologist with over 20 years of experience. He specialises in the assessment and treatment of children, adolescents and adults with autism.<sup>537</sup> Dr Sturgeon has been treating Sam since early 2014.<sup>538</sup> He provided a written statement to the Royal Commission dated 28 September 2020 providing background to his involvement with Sam and general expertise,<sup>539</sup> but was not available for oral evidence.

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533 The name and any identifying information of Leif, as well as the names of the state schools they attended, is the subject of a non-publication direction made by the Royal Commission (CTH-DNP-00051). Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), they were referred to as 'Leif'.

534 Exhibit 7-199, 'Statement of 'Leif'', 13 March 2020.

535 Pursuant to a pseudonym direction made by the Royal Commission (CTH-DNP-00050), she was identified as 'Alice' for the purpose of Public hearing 7.

536 Exhibit 7-09, IND.0056.0001.0001.

537 Exhibit 7-204, 'Statement of Lee Sturgeon', 28 September 2020, at [4].

538 Exhibit 7-204, 'Statement of Lee Sturgeon', 28 September 2020, at [10].

539 Exhibit 7-204, 'Statement of Lee Sturgeon', 28 September 2020.

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## Appendix B: Parties with leave to appear

	Parties
Leave to appear	State of Queensland State of New South Wales State of Victoria Commonwealth of Australia The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane
Legal representatives	K Mellifont QC with E Bennett, A Fraser, and B Power assisted by the Office of the Solicitor Assisting the Royal Commission, appearing as Counsel Assisting the Royal Commission K McMillan QC with P Clohessy instructed by Crown Law, appearing for the State of Queensland G Furness SC with T Glover instructed by the Crown Solicitor's Office (New South Wales), appearing for the State of New South Wales R Bedford of Minter Ellison, appearing for the State of Victoria (appearing 12 to 16 October 2020 only) B Dighton (appearing 12 to 16 October 2020 only) and J Arnott (appearing 7 May 2021 only) instructed by Gilbert + Tobin, appearing for the Commonwealth of Australia L Willson instructed by and appearing for the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane (appearing 12 to 16 October 2020 only)

## Appendix C: Key documents

Key document	Hyperlink
Terms of Reference	<a href="#">Commonwealth</a>
	<a href="#">New South Wales</a>
	<a href="#">Queensland</a>
Transcripts of Public hearing 7	<a href="#">Day 1</a>
	<a href="#">Day 2</a>
	<a href="#">Day 3</a>
	<a href="#">Day 4</a>
	<a href="#">Day 5</a>
	<a href="#">Day 6</a>
Publically available exhibits from Public hearing 7	<a href="#">Day 1</a>
	<a href="#">Day 2</a>
	<a href="#">Day 3</a>
	<a href="#">Day 4</a>
	<a href="#">Day 5</a>
	<a href="#">Exhibits tendered in Chambers</a>
Counsel Assisting's Written Submissions	<a href="#">Counsel Assisting's Written Submissions</a>
Written submissions in response to Counsel Assisting's Written Submissions	<a href="#">The Commonwealth of Australia</a>
	<a href="#">The State of Victoria</a>
	<a href="#">The State of New South Wales</a>
	<a href="#">The State of Queensland</a>

## Appendix D: Acronyms and abbreviations

Acronym or abbreviations	Expansion
<b>ACIE</b>	Australian Coalition for Inclusive Education
<b>ADHD</b>	Attention Deficit Hyperactivity Disorder
<b>APST</b>	Australian Professional Standards for Teachers
<b>ASD</b>	Autism Spectrum Disorder
<b>CALD</b>	Culturally and linguistically diverse
<b>CRPD</b>	Convention on the Rights of Persons with Disability
<b>CYDA</b>	Children and Young People Australia
<b>DEL</b>	Director, Educational Leadership
<b>DDA</b>	<i>Disability Discrimination Act 1992</i> (Cth)
<b>DSE</b>	<i>Disability Standards for Education 2005</i> (Cth)
<b>EAP</b>	Educational Adjustment Program
<b>Education Queensland</b>	Queensland Department of Education
<b>IFS</b>	Integration Funding Support
<b>IQ</b>	Intelligence quotient
<b>NAPLAN</b>	National Assessment Program – Literacy and Numeracy
<b>NCCD</b>	Nationally Consistent Collection of Data on School Students with Disability
<b>NSW</b>	New South Wales
<b>NSW Department</b>	New South Wales Department of Education
<b>NSW Ombudsman 2017 Report</b>	NSW Ombudsman, <i>Inquiry into behaviour management in schools</i> , Final Report, August 2017
<b>NSW Suspension and Expulsion Procedures</b>	<i>NSW Suspension and Expulsion of School Students Procedures – 2011</i> (as in force in 2016)
<b>OSEP</b>	Office of Special Education Programs

Acronym or abbreviations	Expansion
PEO	Principal Education Officer
Public hearing 2	The Royal Commission public hearing on Inclusive education in Queensland – preliminary inquiry held in Townsville from 4 to 7 November 2019
QAI	Queensland Advocacy Incorporated
Queensland schools disability review	An independent review conducted in 2017: <i>Review of education for students with disability in Queensland state schools</i> ; see Exhibit 2-1.15 from Public hearing 2
SEU	Special Education Unit
SGO	Senior Guidance Officer
2015 DSE Review	Urbis for the Australian Department of Education, <i>2015 Review of the Disability Standards for Education 2005</i> , Final Report, 17 July 2015
2020 DSE Review	Australian Department of Education, Skills and Employment, <i>Disability Standards for Education 2005: 2020 Review</i> , Final Report, 2020





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