

Portfolio Committee No. 3 - Education

Education of students with a disability or special needs in New South Wales

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Table of contents

	Terms of reference	vii
	Committee details	viii
	Chair’s foreword	ix
	Findings and recommendations	xi
	Conduct of inquiry	xvi
Chapter 1	Background	1
	Definitions	1
	Educational settings	2
	Government schools	2
	Catholic schools	4
	Independent schools	4
	Legal framework	5
	Key policies	6
	Every Student, Every School	6
	Local Schools, Local Decisions	7
	Wellbeing Framework for Schools	8
	Relevant reports and inquiries	8
	Behaviour management in schools	8
	Supporting students with disability in NSW public schools	9
	Access to real learning: the impact of policy, funding and culture on students with disability	9
	Transition support for students with additional or complex needs and their families	10
	The provision of education to students with a disability or special needs	10
Chapter 2	Culture	13
	Introduction	13
	The model of inclusion	14
	The commitment to inclusion across education sectors	15
	Committee comment	17
	The ‘lived reality’	18
	Segregated settings	28
	The pressure on teachers	31
	Increased prevalence and complexity of disabilities	36
	Committee comment	40

	The role of the NSW Department of Education	41
	Committee comment	45
	The role of parents	46
	Providing additional support to parents	51
	Committee comment	52
	Moving forward	52
	Committee comment	56
Chapter 3	Funding	57
	Commonwealth funding framework	57
	A needs-based funding model	57
	Gonski 2.0	60
	State funding framework	61
	Government schools	61
	Non-government schools	63
	Key concerns regarding funding	63
	Historical underfunding and continued inequity and inadequacy	63
	Committee comment	66
	Impact of the RAM in government schools	67
	Impact of disability definitions	71
	Interface with National Disability Insurance Scheme	75
	Committee comment	76
	Funding for specialised settings in government schools	77
	Funding inadequacy and access to equitable ongoing additional funding	77
	Funding for secondary students	79
	Inadequate executive support and teacher release	79
	Committee comment	81
	Expenditure of funds and accountability	81
	Local Schools, Local Decisions	82
	School Excellence Framework	84
	Committee comment	86
Chapter 4	Access to education and support	87
	Enrolment	87
	The right to enrol	87
	Access to specialised settings	92
	Committee comment	96
	Access to support	97
	School Learning and Support Teams	98
	Committee comment	101
	Individual education plans	101

	Committee comment	104
	Evidence-based practices and programs	105
	Committee comment	109
	Differentiation	110
	Access to curriculum	111
	Adjustments	113
	Access Requests for Integration Funding Support	116
	Committee comment	120
	Schools for Specific Purposes	120
	Committee comment	124
	Support services and expertise	124
	Access to allied health expertise and support	124
	School Counsellors	128
	Assisted School Travel Program	130
	Alternative educational settings	131
	Committee comment	132
Chapter 5	Staff quality	133
	The importance of quality teaching	133
	Policy support for quality teaching	134
	Teacher education and training	134
	Adequacy of teacher education and training	135
	Training in legal obligations	138
	Training in evidence-based practice	142
	Teacher accreditation	143
	Initial teacher education	144
	Professional development	147
	Should special education training be mandatory?	154
	Committee comment	156
	Principal quality and school leadership	156
	Committee comment	160
	Special education teachers	161
	Learning and Support Teachers	162
	Formal qualifications for special education teachers	163
	Committee comment	165
	School Learning Support Officers	165
Chapter 6	Complaints	169
	Introduction	169
	Complaint and review mechanisms in government schools	169
	The complaints process	170

	Committee comment	172
	Complaints about the provision of access and support	172
	The fear of victimisation	174
	Committee comment	178
	Complaints about staff misconduct and allegations of ill-treatment	178
	Concerns about ‘reportable conduct’	181
	Committee comment	183
	Is there a conflict of interest?	183
	Committee comment	186
	Complaint and review mechanisms in non-government schools	186
	Committee comment	189
	Other concerns about complaint and review mechanisms across sectors	189
	Lack of transparency and access to information	189
	Lack of communication and lengthy timeframes	192
	Disempowerment and victim blaming	194
	Data collection and incident reporting	195
	Committee comment	198
	Providing additional support to parents	200
	Committee comment	201
	Is there a need for an independent authority?	201
	The role of the NSW Ombudsman	203
	Committee comment	204
Appendix 1	Submissions	205
Appendix 2	Witnesses at hearings	219
Appendix 3	Minutes	225
Appendix 4	Dissenting statement	263

Terms of reference

That Portfolio Committee No. 3 – Education inquire into and report on the provision of education to students with a disability or special needs in government and non-government schools in New South Wales, and in particular:

- (a) equitable access to resources for students with a disability or special needs in regional and metropolitan areas,
- (b) the impact of the Government's 'Every Student Every School' policy on the provision of education to students with a disability or special needs in New South Wales public schools,
- (c) developments since the 2010 Upper House inquiry into the provision of education to students with a disability or special needs and the implementation of its recommendations,
- (d) complaint and review mechanisms within the school systems in New South Wales for parents and carers, and
- (e) any other related matters.

The terms of reference were self-referred by the committee on 24 August 2016.¹

¹ *Minutes*, NSW Legislative Council, 24 August 2016, p 1080.

Committee details

Committee membership

The Hon Lou Amato MLC*	Liberal Party	<i>Chair</i>
The Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Deputy Chair</i>
The Hon Taylor Martin MLC*	Liberal Party	
The Hon John Graham MLC*	Australian Labor Party	
The Hon Daniel Mookhey MLC*	Australian Labor Party	
Revd the Hon Fred Nile MLC	Christian Democratic Party	
Mr David Shoebridge MLC *	The Greens	

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* The Hon Lou Amato MLC replaced the Hon Michael Gallacher MLC from 3 May 2017, who had previously replaced the Hon Ben Franklin MLC from 17 November 2016.

* The Hon Taylor Martin MLC replaced the Hon Duncan Gay MLC from 22 June 2017, who had previously replaced the Hon Sarah Mitchell MLC from 24 March 2017.

* The Hon John Graham MLC substituted for the Hon Walt Secord MLC from 4 November 2016 until 20 July 2017, and replaced the Hon Courtney Houssos MLC from 20 July 2017.

* The Hon Daniel Mookhey MLC substituted for the Hon Courtney Houssos MLC from 9 January 2017 until 20 July 2017, and substituted for the Hon Walt Secord from 20 July 2017 for the duration of the inquiry.

* Mr David Shoebridge MLC substituted for Mr Justin Field MLC from 16 November 2016 for the duration of the inquiry, who had replaced Ms Jan Barham MLC from 16 November 2016. Mr Shoebridge substituted for Ms Barham from 24 August 2016 for the duration of the inquiry.

Chair's foreword

Children with disabilities and special needs are among the most vulnerable members of our society. Together with their families, they face various challenges in their daily lives. It is therefore concerning that much of the evidence received by this inquiry highlights a stark contrast between the principles of inclusion promoted in our education system and the reality experienced by these children and their families.

We recognise that stigma and discrimination around disability is not unique to the education space. However, it is clear these attitudes continue to manifest themselves in real and significant ways across many aspects of schooling life. The committee was particularly disturbed by reports of serious ill-treatment and abuse of students with disabilities – no child should have to suffer in this way. As a committee, we send a clear message that any behaviour that is disrespectful, harmful or dangerous to students with disabilities and special needs cannot and must not be tolerated – in the same way it is not for any other student.

It should be acknowledged that there are indeed examples of school excellence, characterised by the tremendous efforts of educators who promote a safe and inclusive learning environment. The committee hopes these examples are the norm rather than the exception. We understand that educators must often operate under the most challenging of circumstances in order to deliver quality education to their students, including significant funding and staffing constraints.

Of course there is incredible complexity around the provision of education to students with disabilities and special needs, and it is not our intention to simplify the many factors at play. However, we believe there is a clear need to align policy with practice as barriers to accessing quality education for some students with disabilities are having a profound and lasting impact on their lives and the lives of their families. A deep cultural change is necessary if students with disabilities and special needs are to be genuinely provided with the opportunity to reach their fullest potential.

The committee presents a suite of recommendations that it hopes goes some way to addressing the challenges of the current system. These include recommendations actively promoting the presumption of inclusive education across New South Wales schools and providing for greater accountability for those responsible for the education of students with disabilities and special needs. The recommendations also call for greater funding so that the needs of these students can be met, as part of an enhanced funding model that will provide more equitable access to education across settings and greater certainty about funding arrangements into the future. Further recommendations about process and operation seek to better equip and assist educators in their role, and to strengthen the position of parents in seeking access to education and support, and in pursuing complaints.

Ultimately, we want to ensure that *all* students are given the education they rightfully deserve – one that does not distinguish between 'those with disability and those without' but acknowledges a single cohort of students with varying degrees of need; one that draws the best out of each and every student regardless of their capability; and one that gives the chance to belong and succeed in school and in life.

I thank my fellow committee members, including previous members of the committee on this inquiry, for their diligent efforts in working collaboratively on such an important issue. On their behalf, I would also like to thank the committee secretariat for their hard work and professional support.

Finally, to all those who contributed to this inquiry, particularly the students and families of those with disabilities and special needs, we are grateful for your time, energy, and continued advocacy. We have sought to give voice to your struggles and hope this report and its recommendations play some part in making a difference in your lives, for the better.

A handwritten signature in black ink, appearing to read 'Lou Amato', is positioned above the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

The Hon Lou Amato MLC
Committee Chair

Findings and recommendations

- Finding 1** 41
That, while there are many striking instances of excellence, the inclusive approach to education provision promoted in legislation and policy is not the reality experienced by many students with disabilities and special needs in New South Wales schools.
- Finding 2** 41
That the committee:
- supports the cultural, legislative and policy shift from segregating students with disabilities and special needs to including them in mainstream schooling in all systems, where reasonably practical
 - believes this reflects a broader social change towards the inclusion of people with disabilities
 - recognises that decisions about enrolment should primarily be matters for well-informed parental choice.
- Recommendation 1** 41
That the NSW Government formalise a presumption applicable to all New South Wales schools that a child is to be educated in an inclusive mainstream setting, unless there are compelling individual reasons for other arrangements.
- Recommendation 2** 56
That, each year, the Minister for Education make a Ministerial Statement in Parliament which reports on the educational progress of students with a disability in New South Wales.
- Finding 3** 67
That New South Wales schools will not receive the full allocation as originally agreed under the National Education Reform Agreement due to the Gonski 2.0 policy adopted by the Commonwealth Government, and this will have impacts on students with a disability.
- Recommendation 3** 67
That the NSW Government review and report on the impact of Gonski 2.0 on students with disability in New South Wales schools.
- Recommendation 4** 67
That the NSW Government works with the Commonwealth Government to increase the overall funding available to ensure that adequate funding is provided to government schools to meet the needs of students with disabilities and special needs.
- Recommendation 5** 75
That the NSW Government use data collected through the Nationally Consistent Collection of Data on School Students with Disability instead of NAPLAN in the Student Learning Needs Index, as the basis for calculating the low level adjustment for disability equity loading.

- Recommendation 6** **75**
That the NSW Government use data collected through the Nationally Consistent Collection of Data on School Students with Disability as an alternative indicator of need in calculating additional funding provided to non-government schools.
- Recommendation 7** **75**
That the NSW Government review the NSW Department of Education Disability Criteria to ensure it is in keeping with contemporary understandings of disability.
- Recommendation 8** **81**
That the NSW Government work with stakeholders to develop and introduce a funding model which better reflects the needs of students in all specialised settings and includes consideration of:
- staffing allocations, including executive support
 - provision of specialist services
 - additional teacher release time
 - work, health and safety requirements
 - secondary school curriculum needs.
- Recommendation 9** **86**
That the NSW Department of Education:
- require individual schools to publically report on their expenditure of the equity loading and integrated funding support components of the Resource Allocation Model
 - develop a new reporting mechanism to provide greater transparency and include specific criteria identifying how the needs of students with special needs are being met from the available resources.
- Recommendation 10** **97**
That the NSW Department of Education increase support classes in mainstream schools to adequately meet student need.
- Recommendation 11** **97**
That the NSW Department of Education require reporting and data collection on all children with special needs who have sought enrolment in a school or support class and not obtained that enrolment.
- Recommendation 12** **97**
That the NSW Department of Education create a public dashboard that provides:
- twice yearly updated data on the number of students enrolled in Schools for Specific Purposes and support classes
 - data on students not enrolled but seeking enrolment in Schools for Specific Purposes and support classes and on waiting lists for enrolment in these settings
 - this data on a regional basis.

- Recommendation 13** **97**
 That the NSW Department of Education implement a system for gathering data about the school setting for students with a disability from each school district, with tracking that monitors the numbers who attend special and mainstream settings.
- Recommendation 14** **101**
 That the NSW Department of Education ensure that School Learning and Support Teams are adequately trained, resourced, staffed and remunerated to provide support to students, teachers and their schools.
- Recommendation 15** **105**
 That the NSW Department of Education ensure that Individual Education Plans are developed and implemented:
- as a mandatory requirement for all students with disabilities and special needs
 - with the support of adequate funding and resources.
- Recommendation 16** **105**
 That the NSW Department of Education include, in the dashboard referred to in Recommendation 12, data on the proportion of students with disabilities and special needs who have Individual Education Plans.
- Recommendation 17** **107**
 That the NSW Government urgently implement the NSW Ombudsman’s proposals in its Inquiry into behaviour management in schools.
- Recommendation 18** **110**
 That the NSW Government only offer programs in New South Wales schools that the NSW Department of Education can certify are supported by peer-reviewed evidence of change in the trajectories of student outcomes over time.
- Recommendation 19** **110**
 That, given the concerns raised regarding the efficacy of Reading Recovery, the NSW Department of Education fast track its assessment of this program and publish the outcome of its review.
- Recommendation 20** **116**
 That the NSW Department of Education:
- provide clear guidance to parents and training to schools about what are considered reasonable adjustments for students with disabilities and special needs
 - set timeframes for the implementation of reasonable adjustments in schools.
- Recommendation 21** **116**
 That the NSW Department of Education provide formal best practice guidelines to assist Schools for Specific Purposes work with neighbouring mainstream schools to deliver a full curriculum to their students.
- Recommendation 22** **120**
 That the NSW Department of Education prioritise its review of the Access Request process with a view to streamlining the process and facilitating the timely provision of funds to schools.

- Recommendation 23** **120**
That, as part of the NSW Department of Education's review of the Access Request process, it consider the need to meet the reasonable costs to parents of obtaining the necessary medical reports to support access requests for students with disabilities and special needs.
- Recommendation 24** **120**
That the NSW Department of Education reform the Access Request process so that:
- all access requests applications are resolved within 28 days
 - real time data on the number of applications received, the numbers accepted, the numbers rejected, and the reasons for rejection is published.
- Recommendation 25** **124**
That the NSW Department of Education consider publishing the advice it has been given in relation to its compliance with disability discrimination law in regards to service provision in Schools for Specific Purposes.
- Recommendation 26** **128**
That the NSW Department of Education review how allied health services and support is provided in schools, including directly employing allied health professionals within the Department and introducing adequately resourced multidisciplinary teams at the regional level.
- Recommendation 27** **130**
That the NSW Department of Education provide school counsellors at a minimum ratio of 1:500.
- Recommendation 28** **141**
That the NSW Department of Education review training in the legal obligations and Disability Standards for Education with a focus on practical application of the training.
- Recommendation 29** **141**
That the NSW Department of Education make training in legal obligations and the Disability Standards for Education mandatory for principals.
- Recommendation 30** **142**
That the NSW Education Standards Authority investigate the feasibility of making training in legal obligations and the Disability Standards for Education part of the accreditation process for all teachers and principals.
- Recommendation 31** **156**
That the NSW Department of Education, in relation to professional development in special education:
- resource the increase of teacher release time
 - increase funding allocations for regional schools.
- Recommendation 32** **161**
That the NSW Department of Education make it mandatory for principals to undertake financial management training.

- Recommendation 33** **161**
That the NSW Department of Education investigate formal processes to identify and mentor potential principals and the establishment of a principal preparation program.
- Recommendation 34** **161**
That the NSW Department of Education consider the feasibility of establishing a business manager position in schools.
- Recommendation 35** **165**
That the NSW Department of Education work towards having all Learning and Support Teachers with appropriate special education qualifications to support the range of disabilities and special need presenting in schools.
- Finding 4** **183**
That the level of allegations of ill-treatment of disabled children in New South Wales Schools, including those under the Department's supervision, and the number of reportable incidents, are unacceptable.
- Recommendation 36** **199**
That the NSW Department of Education reform its complaints policy so that:
- plain English advice is provided to parents about the right to complain
 - there is an independent complaints process for a school's unreasonable refusal to enrol a child with a disability or to make reasonable adjustments
 - no principal investigates a complaint against themselves.
- Recommendation 37** **199**
That the NSW Department of Education and the NSW Education Standards Authority develop policy documents outlining the complaint procedures for complaints regarding allegations of misconduct or reportable conduct to set clear guidelines and expectations for the benefit of external complainants.
- Recommendation 38** **199**
That the NSW Department of Education, in its procedures for complaints regarding allegations of misconduct or reportable conduct:
- must notify parents if a matter involving their child is referred to the Employee Performance and Conduct Directorate (EPAC)
 - establish a process for parents to refer a matter to EPAC
 - inform parents of the outcome of any EPAC investigation involving their child
 - maintain existing industrial entitlements and the right to due process for staff employed by the Department.
- Recommendation 39** **201**
That the NSW Department of Education establish a case manager role to assist parents and carers in navigating all aspects of the education system, including the enrolment and complaints processes. In particular, this case manager should be in contact with each family during the enrolment process in order to facilitate well informed choices.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 24 August 2016.

The committee received 427 submissions, 15 supplementary submissions and a proforma.

The committee held seven public hearings: four at Parliament House in Sydney and others in Newcastle, Shellharbour and Lismore.

The committee also conducted a site visit to Wilson Park School, Lismore.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Background

Children are vulnerable and require special duty of care from Parliament. Children with special needs even more so. We have an obligation to ensure our school system not only does not discriminate but actively brings out the best in all students, especially those with special needs. This was brought home powerfully to the committee by a series of inspiring and engaging submissions from young people with special needs and parents who had succeeded in school and continue to succeed in life. That must be our goal.

This chapter provides background information on the provision of education to students with disabilities or special needs in both the government and non-government sector in New South Wales. It focuses on the educational settings for students, in addition to the legal and policy framework for education for students with disabilities.

Definitions

- 1.1 Children with a disability, learning difficulties and/or a behaviour disorder are referred to as ‘children with special learning needs’.²
- 1.2 Children with a disability are those who, in addition to falling within the broad definition of disability set out in anti-discrimination legislation,³ meet the disability criteria employed by the Department of Education. This criteria includes a range of conditions: language, physical disability, intellectual disability (mild, moderate and severe), hearing and vision impairment, mental health problems and autism.⁴
- 1.3 Some children with learning difficulties do not meet the formal disability criteria but still require specific teaching adjustments or strategies to assist them in achieving quality educational outcomes. They may experience difficulties with learning in one or more areas of the curriculum, which may vary in cause, nature, intensity and duration.⁵
- 1.4 For the purpose of this inquiry, the term ‘students with disabilities and special needs’ has been used to refer to students with diagnosed disabilities, additional learning needs, behaviour disorder and learning difficulties, unless otherwise specified.

² NSW Department of Education, *Personalised support for student learning* <<https://education.nsw.gov.au/disability-learning-and-support/personalised-support-for-learning>>

³ See *Anti-Discrimination Act 1977* s 4 and *Disability Discrimination Act 1992* (Cth) s 4 for definitions of ‘disability’.

⁴ Submission 135, NSW Government, p 5; NSW Department of Education and Training, *Disability Criteria (school sector)*, May 2003.

⁵ NSW Department of Education, *Personalised support for student learning* <<https://education.nsw.gov.au/disability-learning-and-support/personalised-support-for-learning>>

Educational settings

- 1.5 The provision of education to children in New South Wales is primarily provided by government schools, Catholic schools and independent schools. Approximately 72 per cent of all school students with disability in New South Wales are supported in government schools.⁶
- 1.6 The decision on where to enrol a student with a disability or special needs depends on a number of factors, including parental choice of educational setting, the student's learning needs, the capacity and availability of support services, and proximity to local specialist services.⁷
- 1.7 It should be noted that figures relating to students with disabilities and special needs are not comparable between the government and non-government sectors. In particular, the definition for children with additional or special needs can differ between sectors.

Government schools

- 1.8 Approximately 14 per cent of the 790,000 students enrolled in 2016 in New South Wales government schools required personalised learning and support because of a disability.⁸ According to Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, these numbers represent 'a diverse group of students with wide-ranging individual strengths, interests, skills, abilities and needs from various social, cultural and language backgrounds'. It includes both students who are gifted and talented and those who have either low-intensity or high intensive support needs due to disability.⁹
- 1.9 According to Ms Bale, the number of students with disability is increasing, as reflected by the increase in funding over the past five years for key programs that provide support in both mainstream and special schools.¹⁰
- 1.10 In government schools, students with a disability may be enrolled in either regular or 'mainstream' classes, specialist support classes within regular schools or special schools (also referred to as Schools for Specific Purposes (SSPs)).

Regular or mainstream classes

- 1.11 In terms of mainstream classes within government schools, there are a range of learning and support resources available to students with a disability. For example, each government school generally has a learning and support resources package that gives the school a specialist teacher and an allocation of flexible funding as part of the school budget. Each school's

⁶ Submission 135, NSW Government, p 1.

⁷ NSW Department of Education and Training (2002) *Who's going to teach my child? A guide for parents of children with special learning needs*, < <http://www.nslhd.health.nsw.gov.au/Services/Carer/resourcesforcarers/Documents/Who%27s%20going%20to%20teach%20my%20child.pdf>>, p 10; Submission 135, NSW Government, p 5.

⁸ Submission 135, NSW Government, p 1.

⁹ Evidence, Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, 27 March 2017, p 2.

¹⁰ Evidence, Ms Bale, 27 March 2017, p 2.

resources can also be pooled across nearby schools to engage additional specialist teachers, school learning and support officers and to develop programs that can be shared.¹¹

- 1.12** Schools can also use their allocation of learning and support resources to personalise the learning for individual students by making adjustments to the way the curriculum is taught and the way students learn. These adjustments are actions or modifications made to enable students to access educational content and outcomes, and include curriculum, instructional and environmental adjustments.¹²

Specialist support classes

- 1.13** Specialist support classes are available in some regular schools for students with moderate to high learning and support needs. They often cater for students that have an intellectual disability, mental health disorder, autism spectrum disorder, physical disability, sensory impairment and/or behavior disorder.¹³

- 1.14** Specialist support classes have:

- fewer students than regular classes, although this can depend on the class type and the students' additional learning and support needs
- a teacher, who is responsible for consulting with parents and carers and allied health professionals to plan personalised learning and support for each student
- a school learning support officer.¹⁴

- 1.15** Students also have access to itinerant support teachers (for hearing or vision needs, and transition), specialist provisions such as examination support, and access to transport assistance.¹⁵

Special schools

- 1.16** Special schools (Schools for Specific Purposes) support students with moderate to high learning and support needs, for example, students with intellectual disability, mental health

¹¹ NSW Department of Education, *Learning and Support*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/learning-and-support>>

¹² NSW Department of Education, *Adjustments to teaching and learning*, <<https://education.nsw.gov.au/disability-learning-and-support/personalised-support-for-learning/adjustments-to-teaching-and-learning>>

¹³ NSW Department of Education, *Specialist support classes in regular schools*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/specialist-support-classes-in-regular-schools>>

¹⁴ NSW Department of Education, *Specialist support classes in regular schools*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/specialist-support-classes-in-regular-schools>>

¹⁵ NSW Department of Education, *Specialist support classes in regular schools*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/specialist-support-classes-in-regular-schools>>

disorder, autism spectrum disorder, physical disability, sensory impairment, learning difficulties and/or behaviour disorder.¹⁶

- 1.17** Other special schools support students facing particular challenges due to health or injury, complex learning difficulties or emotional issues. Examples include hospital schools, tutorial centres and programs (which can help to provide intensive behavioural and educational support) and suspension centres (catering for students who are on long suspension periods but will benefit from a structured program to return to schooling as soon as possible).¹⁷

Catholic schools

- 1.18** Catholic schools constitute about 20 per cent of schools in New South Wales, enrolling approximately 258,775 students.¹⁸ Of the total number of enrolments in 2016, approximately 5.2 per cent of students had a recognised disability.¹⁹
- 1.19** Students with a disability can attend regular Catholic schools where students are integrated or they may attend a Catholic special school or special assistance school.²⁰ There are 11 Catholic schools recognised as special schools or special assistance schools, catering specifically for students with a disability, including those with complex physical sensory and/or emotional/behavioural needs.²¹
- 1.20** About 40 regular Catholic schools also have satellite classes, which are an autism-specific class operated in collaboration with Autism Spectrum Australia.²² Students with certain reading difficulties can also access support and assistance through the NSW Centre for Effective Reading.²³

Independent schools

- 1.21** There are more than 469 independent schools and campuses in New South Wales, enrolling approximately 191,000 students (which is about 16 per cent of all school enrolments in the state).²⁴ According to the Association of Independent Schools of New South Wales, almost one in five students in these schools have special needs.²⁵

¹⁶ NSW Department of Education, *Special schools*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/special-schools-ssps>>

¹⁷ NSW Department of Education, *Special schools*, <<https://education.nsw.gov.au/disability-learning-and-support/programs-and-services/special-schools-ssps>>

¹⁸ Submission 133, Catholic Education Commission NSW, p 3.

¹⁹ Submission 133, Catholic Education Commission NSW, p 8.

²⁰ Submission 133, Catholic Education Commission NSW, p 3.

²¹ Submission 133, Catholic Education Commission NSW, p 5.

²² Submission 133, Catholic Education Commission NSW, p 6.

²³ Submission 133, Catholic Education Commission NSW, pp 6-7.

²⁴ Submission 23, Association of Independent Schools of New South Wales, p 1.

²⁵ Association of Independent Schools of New South Wales, *Students with special needs in NSW Independent Schools* (2017), p 2.

- 1.22 Many independent schools provide religious or values-based education. Examples include schools affiliated with Christian values, Islamic schools, Montessori schools, Rudolf Steiner schools and Aboriginal schools.²⁶

Legal framework

- 1.23 There are a number of legal instruments relevant to the provision of education to students with disabilities and special needs. One overarching instrument which Australia ratified is the *United Nations Convention on the Rights of Persons with Disability*, an international instrument specifically dedicated to disability within the context of human rights. Under this convention, there is an obligation to recognise the fundamental rights of individuals with disabilities.²⁷
- 1.24 At the state level, the *Education Act 1990* sets out the rights and duties for education of all children, including the provision of assistance to children with a range of special needs, including disabilities and significant learning difficulties.²⁸ This Act outlines that every child has the right to receive an education and that it is the duty of the state to see that education is of the highest quality.²⁹
- 1.25 Also relevant is discrimination legislation, including the Commonwealth *Disability Discrimination Act 1992*, which provides protection for everyone in Australia against discrimination based on disability. Under this Act, the Disability Standards for Education 2005 were developed to provide a framework to ensure that students with disability are able to access and participate in education on the same basis as other students.³⁰
- 1.26 In New South Wales there is also the *Anti-Discrimination Act 1977*, which makes it unlawful to discriminate on a number of grounds including disability. This law only applies, however, to government schools.³¹
- 1.27 Also worth noting is the impact of the National Disability Insurance Scheme, which will bring changes to how children with disability and their families access specialist disability services. This scheme is a major reform at the national level, which will enable participants to have greater choice over their supports and services. It is expected to be in place by July 2018. According to the NSW Government, the National Disability Insurance Scheme will ‘deliver substantial benefits to people with disability in NSW, including school-aged children and young people’.³²
- 1.28 The National Disability Insurance Scheme will also ‘provide opportunities and challenges for schools’ as eligible students will receive new or improved specialist disability supports, which

²⁶ Submission 23, Association of Independent Schools of New South Wales, p 1.

²⁷ Submission 1, Privacy Commissioner of New South Wales, p 1.

²⁸ Submission 135, NSW Government, p 4.

²⁹ Submission 135, NSW Government, Appendix A, pp 45-46.

³⁰ Commonwealth of Australia, *Disability Standards for Education 2005: plus Guidance Notes* (2006), p iii.

³¹ Submission 135, NSW Government, p 4.

³² Submission 135, NSW Government, p 29.

will provide ‘the potential to support their participation in learning and achievement of positive learning outcomes’.³³

1.29 Other relevant legislation includes work and health safety legislation, child protection legislation and state and federal privacy legislation.³⁴ There is also a common law duty of care relating to the education of children with a disability, which makes the state of New South Wales, acting through the Department of Education, responsible for taking reasonable steps to protect students enrolled in government schools from risks that are reasonably foreseeable. This means that schools have to demonstrate that systems are in place to identify, eliminate and control risks.³⁵

Key policies

1.30 A number of policies and reforms have been implemented over the last decade, all aimed at improving support for students with disability. As the NSW Government noted, these reforms ‘are supporting teachers to better recognise and respond to learning and wellbeing needs of students’, thereby enabling students to achieve their academic, social and emotional goals and aspirations.³⁶ On a general level, reforms have included:

- strategies to promote greater awareness and understanding about the rights of students and their families, particularly under disability legislation
- the introduction of annual national data collection models in schools about the provision of adjustments for students with disability
- an increased focus on personalised learning and support to meet students’ needs.³⁷

Every Student, Every School

1.31 The Every Student, Every School (ESES) initiative commenced in 2012 in government schools, to provide better learning and support for students with disability, learning difficulties or behaviour support needs. The initiative is supported by the Australian Government’s 2011 More Support for Students with Disabilities National Partnership, which provided almost \$48 million in 2012 and 2013 to build the capabilities of schools to meet the educational needs of students with disability.³⁸

1.32 Under the ESES framework there are five key areas of projects to be established in schools:

³³ Submission 135, NSW Government, p 29.

³⁴ Submission 135, NSW Government, p 4. For example, the *Work Health and Safety Act 2011*, *Work Health and Safety Regulation 2011* and *Children and Young Persons (Care and Protection) Act 1998* as outlined in Submission 135, NSW Government, Appendix A, pp 46-47.

³⁵ Submission 135, NSW Government, Appendix A, p 46.

³⁶ Submission 135, NSW Government, pp 1-2.

³⁷ Submission 135, NSW Government, p 2.

³⁸ NSW Department of Education, *Every Student, Every School*, < <http://www.dec.nsw.gov.au/what-we-offer/education-and-training/disability-support/every-student-every-school>>

- professional learning for skilled and knowledgeable teachers, through the implementation and development of training opportunities such as additional scholarships for teachers and increased access to online learning courses in areas focused on supporting students with disability
- support for students with disability in regular classrooms, including a specialist teacher presence in mainstream classes and additional funding for support services
- information to support teaching and learning and expert support, through an enhanced website to support teachers, principals, parents and the community, in addition to the development of specialist information for schools, academic partnerships and new models and strategies to support particular students with disability
- instruments to understand and assess individual student's learning needs, through the development of materials, a functional assessment tool, a standards framework and best practice guide and a training regime
- special schools as centres of expertise, through the development of networks across schools to share the knowledge, expertise and specialist resources available in special schools.³⁹

Local Schools, Local Decisions

- 1.33** In 2012 the Local Schools, Local Decisions reforms were also introduced in New South Wales, providing public schools with 'more authority to make local decisions about how best to meet the needs and priorities of their students'.⁴⁰
- 1.34** Under these reforms, schools have more freedom and flexibility to make local decisions about how best to use funding to respond directly to the learning needs of their students, through a single school budget allocated through the needs-based Resource Allocation Model which is linked to schools' plans.⁴¹
- 1.35** The benefits of this approach include:
- principals having greater opportunities to improve teacher quality and enhance performance management
 - strengthened consultation with parents and local communities, in order to achieve positive student learning outcomes
 - increased opportunities for schools to meet local needs by working together and combining resources within communities of schools, and across networks of schools.⁴²

³⁹ NSW Department of Education and Communities, *Every Student, Every School*, pp 12-15.

⁴⁰ Submission 135, NSW Government, p 30.

⁴¹ Submission 135, NSW Government, p 30.

⁴² Submission 135, NSW Government, p 30.

Wellbeing Framework for Schools

- 1.36** Introduced in 2015, the Wellbeing Framework for Schools, is a strength based approach to enhancing student wellbeing. It ‘contextualises wellbeing to individual students, school settings and local school communities’, and aims to support and develop positive behaviour and learning cultures.⁴³
- 1.37** The initiative is underpinned by the NSW Government’s Supported Students, Successful Students funding package, which provided \$167.2 million to promote positive student wellbeing.⁴⁴ It addresses five aspects related to wellbeing (emotional, social, physical, spiritual and cognitive) with the themes of ‘connect, succeed and thrive’.⁴⁵

Positive Behaviour for Learning

- 1.38** Positive Behaviour for Learning programs aim to ‘create positive, safe and supportive learning environments that meet the learning and wellbeing needs of all students’. A number of government schools have adopted this approach since 2005.⁴⁶
- 1.39** Under this approach, the academic and social needs to students are supported to enable them to be successful. Schools also establish a continuum of supports to meet student needs. The benefits of this approach are reported to be that:
- students respond positively as they are taught what is expected of them
 - staff develop consistent responses to student learning and behaviour
 - students feel safe and cared for at school
 - unproductive and challenging behaviour can be significantly reduced for most students.⁴⁷

Relevant reports and inquiries

- 1.40** This section outlines a number of relevant reports which have considered the support of students with disabilities or special needs.

Behaviour management in schools

- 1.41** During the inquiry, in August 2017, the NSW Ombudsman tabled its special report to Parliament on behaviour management in schools. The focus of the report was on identifying best practice in relation to behavioural management in government and non-government school settings, through consideration of key practice and systems issues.⁴⁸

⁴³ Submission 135, NSW Government, pp 31-32.

⁴⁴ Submission 135, NSW Government, p 32.

⁴⁵ Submission 135, NSW Government, p 32.

⁴⁶ Submission 135, NSW Government, p 32.

⁴⁷ NSW Department of Education, *About PBL* <<http://www.pbl.schools.nsw.edu.au/about-pbl>>

⁴⁸ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, 11 August 2017, p 2.

- 1.42 The report outlined a number of proposals for reforms to meet the learning and support needs of students, within a framework of best practice and evidence-based behaviour support.⁴⁹
- 1.43 Mr Steve Kinmond, the Deputy Ombudsman and Community and Disability Services Commissioner, emphasised the importance of expert leadership and the right culture and training, in addition to the need to identify what is required in terms of professional learning, such as the principles for disability standards and education and their practical application.⁵⁰
- 1.44 Other issues examined by the Ombudsman's office included the use of timeout strategies and seclusion, use of restraints, use of part-day attendance and distance education options and the use of suspensions and expulsions, all of which were relevant to children with disability.⁵¹

Supporting students with disability in NSW public schools

- 1.45 In May 2016, the New South Wales Auditor-General released an audit report which examined the performance of the NSW Department of Education and its schools in managing the transition to school for students with disability and the support provided by teachers to improve these students' educational outcomes.⁵²
- 1.46 Overall, the New South Wales Auditor-General found that the Department 'is doing a reasonable job', although there were some disparities between schools in terms of the level of support provided to students with disability, partly due to 'cultural resistance in schools and the lack of expertise of some teachers'.⁵³
- 1.47 While the New South Wales Auditor-General acknowledged improvements the Department had made in implementing initiatives to help teachers and students with disability, it noted that some teachers felt they were still not being effectively supported and wanted greater support to help manage student behaviour and support those with autism and mental health issues.⁵⁴

Access to real learning: the impact of policy, funding and culture on students with disability

- 1.48 In 2016, the Senate's Education and Employment References Committee conducted an inquiry into the impact of policy, funding and culture on students with disability. The committee made several recommendations.

⁴⁹ NSW Ombudsman, *NSW Ombudsman Inquiry into behaviour management in schools* (August 2017), p iii.

⁵⁰ Evidence, Mr Kinmond, 11 August 2017, p 2.

⁵¹ Evidence, Mr Kinmond, 11 August 2017, p 2.

⁵² New South Wales Auditor-General, *Performance Audit report, Supporting students with disability in NSW public schools: Department of Education* (12 May 2016), p 2.

⁵³ New South Wales Auditor-General, *Performance Audit report, Supporting students with disability in NSW public schools: Department of Education* (12 May 2016), p 2.

⁵⁴ New South Wales Auditor-General, *Performance Audit report, Supporting students with disability in NSW public schools: Department of Education* (12 May 2016), p 2.

1.49 The committee recognised the importance of a relationship between teachers and the families of students with disability and the value of mainstream inclusion of students with disability. It made ten recommendations, including:

- that the Australian Government commit to funding schools on the basis of need, according to the Gonski review
- that the Australian Government work with the states and territories to establish a national approach to ending the bullying of students with disability, a mandatory education course for teachers entering the classroom to improve skills in the inclusion of students with disability and the investigation of a national qualification standard for teacher aids and assistants
- the development of a better process to collect and publish information about levels of access and attainment for students with disability
- an end to restrictive practices in schools, consistent with the 2015 Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings.⁵⁵

Transition support for students with additional or complex needs and their families

1.50 In June 2011, then Minister for Education, the Hon Adrian Piccoli MP, referred an inquiry into transition support for students with additional or complex needs and their families to the Standing Committee on Social Issues of the NSW Legislative Council.

1.51 The committee examined the importance of positive transitions on the educational outcomes of students with additional or complex needs, and the barriers which were impeding on successful transitions. Overall, the committee made 24 recommendations aimed at overcoming these barriers, among which was:

- an online central access point for information and links to services for families
- additional funding for support teachers in the transition context
- training for school staff on their obligations regarding students with additional or complex needs.⁵⁶

The provision of education to students with a disability or special needs

1.52 In 2010, the Legislative Council's General Purpose Standing Committee No. 2 tabled its report into the provision of education to students with disability of special needs. Finding that there were significant inadequacies in the education system for students with disabilities and special needs. The committee made several recommendations, including improvements to the assessment process for individual disability funding, increased access to professional support,

⁵⁵ Education and Employment References Committee, The Senate, *Access to real learning: the impact of policy, funding and culture on students with disability* (2016), pp vii-ix.

⁵⁶ Standing Committee on Social Issues, NSW Legislative Council, *Transition support for students with additional or complex needs and their families* (2012), p xiii – xvi.

enhanced teacher training and the need to address the unmet demand for special education places.⁵⁷

- 1.53** The report also noted the shift in educational policy, both internationally and in Australia, away from the notion of segregated settings for all students with disabilities and special needs to a more integrated and inclusive model of education.⁵⁸
- 1.54** One term of reference for this current inquiry is to consider ‘developments since the 2010 Upper House inquiry into the provision of education to students with a disability or special needs and the implementation of its recommendations’. The implementation of the recommendations from the 2010 report will be considered throughout this report.

⁵⁷ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p xii.

⁵⁸ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p xiv.

Chapter 2 Culture

An overarching theme of this inquiry is the cultural context within which students with disabilities and special needs are not only educated but operate in their daily lives. While inadequacies in funding and access to support, among other key issues to be explored in this report, were raised as primary concerns, inquiry participants consistently drew these issues back to an entrenched stigma and discrimination around disability and special needs that continues to exist today. This chapter explores, on the one hand, the model of inclusion promoted in current education policy and, on the other, the ‘lived reality’ of students, parents, teachers and schools. The chapter also considers the role of the NSW Department of Education as a driver of school culture and discusses the fundamental challenges parents of students with disabilities and special needs face within the education system.

In highlighting the significance of culture, this chapter provides a backdrop for considering the key areas of concerns raised by inquiry participants, that will be discussed in the following chapters.

Introduction

- 2.1** Navigating the provision of education to students with disabilities and special needs is both highly complex and challenging. As Mr Mark Scott, Secretary of the NSW Department of Education, described, it is an area of ‘considerable debate and discussion’⁵⁹ – one that is, for many, highly emotive but above all rooted in the deepest desire to ensure that *all* students, including the most profoundly disabled, receive the quality education they are entitled to and deserve. The questions often asked centre around what the best learning environment is for children and how best they will flourish and maximise their potential.⁶⁰
- 2.2** In answering these questions, there has been a significant shift in thinking and practice over the last three decades, with education policy moving away from the notion of segregated settings for students with disabilities and special needs, to a more inclusive model of education.⁶¹ The NSW Government in its submission acknowledged these changing expectations, stating that they are currently ‘driven by an increasing focus on the rights of students with disability and their inclusion in education provisions and opportunities available to all students.’⁶²
- 2.3** Indeed, as outlined in Chapter 1, the focus on inclusion is prescribed in the various legal instruments and policies that underpin the provision of education to students with disabilities and special needs in both government and non-government schools in New South Wales. In submissions and in hearings, inquiry participants repeatedly made reference to the provision of education to students with disabilities, on the same basis as every other student, as a right

⁵⁹ Evidence, Mr Mark Scott, Secretary, NSW Department of Education, 23 June 2017, p 56.

⁶⁰ Submission 135, NSW Government, p 4.

⁶¹ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p 9; Audit Office of New South Wales, New South Wales Auditor-General’s Report, *Performance Audit – Supporting students with disability in NSW public schools, NSW Department of Education* (2016), p 6.

⁶² Submission 135, NSW Government, p 4.

and drew particular attention to the legal obligations of government to facilitate and protect this right.⁶³

- 2.4 The following sections outline the model of inclusion and consider how it has translated in practice for the many students with disabilities and special needs in New South Wales schools. In particular, the provision of inclusive education within government schools is examined.

The model of inclusion

- 2.5 Inclusive education refers to the philosophy of embracing human diversity and valuing and supporting the full participation of all students as equal members of an educational community.⁶⁴ In effect, students with disabilities and special needs should not only be enrolled in a mainstream setting but that education environments and teaching strategies should be designed to include and benefit all students.⁶⁵
- 2.6 The benefits of inclusive education have been widely reported, including in the findings of the inquiries discussed in Chapter 1.⁶⁶ This evidence was reflected by a number of inquiry participants in the current inquiry.⁶⁷
- 2.7 For example, from the perspective of students with disabilities and special needs, Family Advocacy stated that ‘both international and Australian research shows that children with disability do better on all measures in inclusive settings, rather than disability-specific settings’.⁶⁸ Similarly, another inquiry participant stated: ‘There is now over 40 years of research available in the area of inclusive education. The evidence is clear. Students with disabilities perform better in inclusive settings than in segregated settings’.⁶⁹
- 2.8 Likewise, Ms Suzanne Becker, Chief Executive Officer, Lifestart, spoke of the positive impact students with disabilities in a mainstream classroom can and does have on the rest of the student body, which can in turn impact the wider community:

⁶³ For example, Evidence, Mr Peter Skinner, President, Special Education Principals and Leaders Association, 27 March 2017, p 38; Evidence, Mr Andrew Johnson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, 23 June 2017, p 12; Evidence, Ms Ruth Callaghan, General Manager Stakeholder Relations, Northcott, 3 April 2017, p 46; Evidence, Ms Suzanne Becker, Chief Executive Officer, Lifestart, 3 April 2017 p 58; Submission 159, Children and Young People with Disability Australia, p 6; Submission 173, Mrs Gina Wilson-Burns, p 3.

⁶⁴ Children with Disability Australia, *Inclusion in education – towards equality for students with disability* (2014), p 6.

⁶⁵ Education and Employment References Committee, The Senate, *Access to real learning: the impact of policy, funding and culture on students with disability* (2016), p 63.

⁶⁶ General Purpose Standing Committee No. 2, *The provision of education to students with a disability or special needs*, p 61; Education and Employment References Committee, *Access to real learning: the impact of policy, funding and culture on students with disability*, pp 63-64.

⁶⁷ For example, Evidence, Dr Laura Issa, Parent, 27 March 2017, p 18; Submission 147, Mrs Meaghan Sweeney, p 2; Evidence, Ms Callaghan, 3 April 2017, p 45; Submission 207, Name suppressed, p 10.

⁶⁸ Submission 151, Family Advocacy, p 9.

⁶⁹ Submission 188, Name suppressed, p 2.

We know that achieving positive outcomes and meaningful inclusive education for all students can have significant social impact on the whole student cohort as they grow to adulthood. This impact can then broaden to the wider community and increase social and economic participation for all young people and their family members.⁷⁰

- 2.9** Furthermore, Ms Becker advised of the positive experiences of students with disabilities beyond schooling life, explaining: ‘Lifestart receives many positive stories about family experiences as they transition their child through the education system from the early years to post-school. This tells us that inclusion can be done’.⁷¹ This was supported by Mrs Meaghan Sweeney, parent of a daughter with Down Syndrome who received her education in a mainstream classroom setting and is now an active member of the local community:

I make this submission as the parent of a 25 year old woman with Down Syndrome who attended regular class in the NSW State system for her whole education to HSC level. My daughter ... now lives independently in the community, has a part time job, volunteers looking after babies at a local crèche, gets around our town on her pushbike and is very well known and loved. She is a well-adjusted, social and competent citizen within her intellectual capacity. I maintain that her education in the regular class has a lot to do with her adult success. Being educated with her peers in the regular class gave her the same experiences, curriculum, expectations and motivation to grow and develop.⁷²

- 2.10** Ms Stephanie Gotlib, Chief Executive Officer of Children and Young People with Disability Australia, therefore drew the conclusion that ‘segregation is not best practice’. She argued: ‘We know that through all the research through time. It does not mean that people with disability do not learn in segregated education, but it is not best practice’.⁷³

The commitment to inclusion across education sectors

- 2.11** The committee received evidence from representatives of the government and non-government sectors indicating a joint commitment to providing inclusive education to students with disabilities in their schools.
- 2.12** Mr Scott stated that the Department has ‘an inclusionary policy’ that is a ‘fundamental underpinning of the work that we do’.⁷⁴ Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, added: ‘We recognise the changing nature of service delivery and ... we celebrate inclusivity’.⁷⁵
- 2.13** Mr Scott explained ‘the bias towards inclusion’ within his sector, given that of the more than 100,000 students receiving additional support for disability, ‘the overwhelming majority of

⁷⁰ Evidence, Ms Becker, 3 April 2017 p 59.

⁷¹ Evidence, Ms Becker, 3 April 2017 p 59.

⁷² Submission 147, Mrs Meaghan Sweeney, p 1.

⁷³ Evidence, Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, 3 April 2017, p 55.

⁷⁴ Evidence, Mr Scott, 23 June 2017, p 61.

⁷⁵ Evidence, Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, 8 May 2017, p 42.

those students are in mainstream classrooms'.⁷⁶ Mr Scott highlighted the example of students with autism being educated in regular schools, stating:

The majority of children diagnosed as being on an autism spectrum are in mainstream classes in regular government schools. That is how the system is working out. That is basically our underlying desire and assumption.⁷⁷

2.14 However, the Department did acknowledge a place for specialised settings even though they actively promote an 'inclusive mindset' through policies such as Every Student, Every School. Mr Murat Dizdar, Deputy Secretary, School Operations and Performance, NSW Department of Education, advised:

A starting base has always been for every child to have an inclusive and embracing education provision. Sometimes there are tough and challenging conversations about the complexities of the child with the educational expert, having exhausted the mainstream setting—whether that be a support class or a special setting. In my experience operationally, we are hell-bent to ensure that we have an inclusive mindset for each and every learner... We have seen the inclusive mindset reinforced by this [Every Student, Every School] reform.⁷⁸

2.15 An inclusive approach to educating students with disabilities is also taken within the Catholic sector. According to the Catholic Education Commission NSW, 'Catholic schools strive to provide an inclusive and supportive environment for students with a disability and their parents.'⁷⁹ Mr Ian Baker, Director, Education Policy and Programs, Catholic Education Commission NSW, noted that this approach includes the enrolment of students with disabilities in Catholic schools, stating that such students 'have the right to enrol on the same basis as every other student.'⁸⁰ Mr Baker added that, in accordance with their obligations under legislation, 'it is a level playing field' from the outset.⁸¹

2.16 The Catholic sector supports the rights of students with disabilities 'to be educated in the most suitable setting with appropriate curriculum access'⁸² and thus makes provisions for students to be educated in specialised settings such as special schools.

2.17 The independent sector, while not a 'system' that is under the direction of a single overarching authority, is bound by most of the same legislative requirements as government and Catholic schools. As such, independent schools are aware of and must comply with instruments like the Disability Standards for Education 2005. As the peak representative and advocating body

⁷⁶ Evidence, Mr Scott, 23 June 2017, p 61.

⁷⁷ Evidence, Mr Scott, 23 June 2017, p 61.

⁷⁸ Evidence, Mr Murat Dizdar, Deputy Secretary, School Operations and Performance, NSW Department of Education, 23 June 2017, p 61; The issue of segregated settings will be considered in detail later in this chapter.

⁷⁹ Media Release, Catholic Education Commission NSW, 'Teachers, schools need resources to support students with autism', 22 June 2017.

⁸⁰ Evidence, Mr Ian Baker, Director, Education Policy and Programs, Catholic Education Commission NSW, 27 March 2017, p 68.

⁸¹ Evidence, Mr Baker, 27 March 2017, p 68.

⁸² Media Release, Catholic Education Commission NSW, 'Teachers, school needs resources to support students with autism', 22 June 2017.

for independent schools, the Association of Independent Schools of New South Wales assists schools in this endeavour. While the Association clearly plays a leadership role, it confirmed they had no power to compel compliance on any individual school. The Association advised that one of their core functions is to ‘support schools to cater for students with disabilities and to develop a deeper understanding of the application of the *Disability Discrimination Act 1992* and the *Disability Standards for Education 2005*’.⁸³ This was confirmed by Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW, with respect to enrolment:

NESA requirements for policies are followed by all schools. They are required to be legislatively compliant. The Disability Standards for Education make it very clear that children with disabilities and their families have the right to enrol in the school of their choice. We as an organisation absolutely support that in all our briefings dealing with disability and in interactions with schools when we support them in enrolment meetings regarding students with high support needs. We make it very clear to the schools that it is their obligation to enrol and they must follow the procedures and the disability standards to ensure the child and the family are not disadvantaged in any way.⁸⁴

- 2.18** The committee was also informed that there is a working collaboration between the sectors to support and make educational provision for students with disabilities and special needs. Ms McKay asserted that ‘there has been a lot of proactive work done and a lot of good negotiations with our colleagues—our Catholic colleagues, our department colleagues’.⁸⁵ She went on to state:

We do not see one another as adversaries, and I think that is a very, very positive thing. The three sectors work very well together to cater for kids with disabilities and we support one another to do that. ... we just want a fair system where kids, based on need, are funded in the context that their parents choose so that they are safe, get a good quality education and can transition to society.⁸⁶

Committee comment

- 2.19** The committee acknowledges and strongly supports the cultural, legislative and policy shift from segregating students with disabilities and special needs to including them in all aspects of education provision. The committee also welcomes the commitment expressed by government and non-government education providers to promoting inclusive education and practices in their schools.
- 2.20** The committee affirms the fundamental premise that every child is equal and every child in this state, regardless of their academic ability, special needs or material circumstances, is entitled to a non-discriminatory, inclusive and world class education in a New South Wales school.

⁸³ Submission 23, Association of Independent Schools of New South Wales, p 2.

⁸⁴ Evidence, Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW, 27 March 2017, pp 67-68.

⁸⁵ Evidence, Ms McKay, 27 March 2017, p 65.

⁸⁶ Evidence, Ms McKay, 27 March 2017, p 65.

The 'lived reality'

2.21 Despite a strong commitment across the school sectors to providing an inclusive educational experience for students with disabilities and special needs, the committee received overwhelming evidence of an education system that is, as one inquiry participant stated, 'not quite there yet'.⁸⁷

2.22 Some asserted that while there has been some progress in providing educational opportunities to students with disabilities, the system is still significantly lacking in its efforts to maximise the learning potential of these students in an inclusive environment. Ms Ruth Callaghan, General Manager Stakeholder Relations, Northcott, for example, stated:

... there has been progress in education provision for children and young people with disability; however, support services remain fragmented, poorly coordinated and under-resourced. Capacity-building for teachers that includes practical strategies and tools for classroom management and interaction with children are particularly crucial. It is not just about understanding the essential legal obligations and requirements; it is also about going beyond that, and maximising the potential of every child and young person to be the best they can be, and embedding that in the educational context, as we do for all other children.⁸⁸

2.23 Other inquiry participants argued that, since the 2010 Upper House inquiry into the education of students with disabilities (2010 Upper House inquiry) in particular, very little has improved.⁸⁹ For example, according to Ms Claudia Vera, Organiser, NSW Teachers Federation, there has been a real failure in moving towards equitable education for all students over recent years, resulting in poor long term outcomes for students with disabilities and special needs:

That we present before you seven years after a Legislative Council inquiry parallel focus, with dismal progress made towards implementation of its recommendations, demonstrates an untenable situation impacting on cohort after cohort of students with disability, their families, teachers and peers. The failure to progress toward equitable education for every student is harming the current experiences and future life outcomes of people with disability, with evidence pointing to widening gaps in social, employment and health outcomes.⁹⁰

2.24 In this education system that is 'not quite there yet', inquiry participants fervently argued that the principles of inclusion enshrined in legislation are not always reflected in the 'lived reality' of students with disabilities and special needs. Ms Becker went so far as to describe inclusion as a 'pipe dream' for many families.⁹¹

⁸⁷ Submission 207, Name suppressed, p 3.

⁸⁸ Evidence, Ms Callaghan, 3 April 2017, p 45.

⁸⁹ For example, Submission 368, Name suppressed, p 2; Submission 356, Name suppressed, p 2; Submission 353, Fairfield Public School, p 4; Submission 391, Name suppressed, p 3; Submission 164, Lifestart, pp 15-16.

⁹⁰ Evidence, Ms Claudia Vera, Organiser, NSW Teachers Federation, 3 April 2017, p 2.

⁹¹ Evidence, Ms Becker, 3 April 2017 p 58.

2.25 Indeed, for many parents of children with disabilities, the committee heard that the system is characterised by a rhetoric far removed from their everyday experience.⁹² As Dr Melanie Heyworth, parent of a child with autism, stated: ‘...whilst there is the rhetoric of inclusion in mainstream schooling, there is a gross disparity between that rhetoric and the lived reality of our children in the school...’.⁹³

2.26 This view was shared by other stakeholders who maintained that the right to an inclusive education has not been recognised for many students with disabilities and that such students experience profound barriers and disadvantage throughout their schooling life.⁹⁴ For example, Ms Kate Finch, Manager, Systemic Advocacy, People with Disability Australia, described the story of a student with multiple disabilities to demonstrate the significant gap between policy and practice:

... despite a policy and legislative framework in New South Wales that is meant to facilitate the inclusion of students with disability, in reality there remains a significant gap between this rhetoric and the realities of the young people that we have worked with. As [his] story clearly demonstrates, pervasive low expectations, discrimination and the legacy of a medical model of disability remain the biggest barriers to inclusion. Students with disability are routinely denied access to the mainstream school environment. They are segregated in special schools and special education units. Not only are they denied the educational opportunities available to their peers, they are also unnecessarily marginalised and stigmatised.⁹⁵

2.27 For many inquiry participants, the discord between the principles of inclusion promoted in education policy and the lived reality of students with disabilities lies in a deep-seeded stigma and discrimination around disability and special needs that is being played out both openly and subtly.⁹⁶ Some acknowledged that positive examples of acceptance and genuine inclusion within mainstream schools do exist and these are considered throughout this chapter and the report. However, a real cultural problem within the education system around disability was highlighted by various stakeholders.⁹⁷ Many attributed this culture to perceptions and assumptions about people with disability that label them as ‘subhuman’, incapable of learning, and burdensome.⁹⁸

⁹² For example, Submission 159, Children and Young People with Disability Australia, p 7; Evidence, Ms Michelle McLellan, Parent, 8 May 2017, p 14; *In camera* evidence, Witness B, 19 May 2017, pp 1-2, published by resolution of the committee.

⁹³ Evidence, Dr Melanie Heyworth, Parent, 27 March 2017, p 21.

⁹⁴ For example, Evidence, Ms Becker, 3 April 2017 p 59; Evidence, Mr Johnson, 23 June 2017, p 12; Evidence, Ms Gotlib, 3 April 2017, p 51.

⁹⁵ Evidence, Ms Kate Finch, Manager, Systemic Advocacy, People with Disability Australia, 3 April 2017 p 39.

⁹⁶ For example, Evidence, Ms Finch, 3 April 2017 p 39; Evidence, Ms Becker, 3 April 2017 p 59; Evidence, Dr Heyworth, 27 March 2017, p 30.

⁹⁷ For example, Evidence, Ms Meg Clement-Couzner, Senior Systemic Advocate, Family Advocacy, 3 April 2017, p 65; Evidence, Mrs Vanessa Comiskey, Parent, 19 May 2017, p 11; Submission 259, Education and Disability Advocacy NSW, p 1; Submission 40, Name suppressed, p 4.

⁹⁸ For example, *In camera* evidence, Witness E, 19 May 2017, p 2, published by resolution of the committee; Evidence, Mr David Roy, Parent and academic, 27 March 2017, p 30; Evidence, Ms Gotlib, 3 April 2017, p 51.

- 2.28** For example, one witness explained how her treatment within the education system, by all levels of authority within the government sector, reflected an attitude that people with disability were ‘less than human’:

These attitudes, the way I and my family have been treated, make me think that, for the education department right up through the higher echelons, from teachers to principals to regional directors to education directors to the Minister himself, that people with disability are less than human, subhuman, and therefore not accorded the same rights, respect, dignity and procedural fairness accorded to all other people living in Australia ...⁹⁹

- 2.29** This view was echoed by, Mr David Roy, academic and parent of a child with autism, who contended that students with autism, in particular, are brazenly labelled and then excluded from the mainstream environment:

We are putting a label on them which could be ‘autism’ or it could be a black triangle. We then put them in a wooden hut. We then fence them off from the rest of the community and tell the community they are different: ‘They cannot learn. They are not as good as you. They are genetically not as superior’...¹⁰⁰

- 2.30** Indeed, Ms Gotlib of Children and Young People with Disability Australia asserted that students with disabilities and special needs are often subject to dismissive assumptions about their capacity to learn and the purpose of an education for a child with seemingly limited life opportunities:

The value of education, which is so highly thought of and applied to children without disability, is often seen as inapplicable or irrelevant to students with disability. Assumptions are often made about limitations regarding what and how students with disability will learn and what the future life opportunities will be. Underlying assumptions frequently position students with disability as incapable or a burden, or even violent, as I heard recently.¹⁰¹

- 2.31** This rang true for parent Mrs Vanessa Comiskey, who told the committee that her son was made to feel ‘worthless’. She argued that students with disability are being failed the moment they are regarded as being incapable of learning:

As a full-time carer, who has been picking up the pieces for an inadequate education system, I have come to realise that it is when we stop believing in children as capable individuals, no matter the severity of their disability, we ultimately fail them. Too many times, the preconceived notions and the ideas about my child’s disability greatly impacted on his schooling experiences and made him feel absolutely worthless.¹⁰²

- 2.32** However, the committee received evidence from numerous stakeholders that students with disabilities and special needs are, as all other students, able to, want to – and do – learn.¹⁰³ As

⁹⁹ *In camera* evidence, Witness E, 19 May 2017, p 2, published by resolution of the committee.

¹⁰⁰ Evidence, Mr Roy, 27 March 2017, p 30.

¹⁰¹ Evidence, Ms Gotlib, 3 April 2017, p 51.

¹⁰² Evidence, Mrs Comiskey, 19 May 2017, p 11.

¹⁰³ For example, Evidence, Mrs Comiskey, 19 May 2017, p 13; Evidence, Mr Roy, 27 March 2017, p 22; Submission 173, Mrs Gina Wilson-Burns, p 1.

Ms Anne Flint, Executive Member, Special Education Principals and Leaders Association, stated: ‘All children can progress, and they do’.¹⁰⁴

- 2.33** For example, Mrs Gina Wilson-Burns, whose child has significant disability, informed the committee of her son’s academic and social achievements when he was in a supportive mainstream primary school:

Despite being labelled by NSW DET Regional Office as the ‘most disabled child ever to be mainstreamed’ his primary school years, after some early teething problems, were highly successful both academically and socially and he and his school were one of the 10 case studies highlighted in the Federal Government’s ‘Disability Standards for Education 2005 – Exemplars of Practice’.¹⁰⁵

- 2.34** Similarly, Mr David Roy, Parent and Lecturer, School of Education, University of Newcastle, explained being told that his autistic son could not learn and yet was excelling in many areas while being successfully homeschooled. Mr Roy argued that students with disabilities and special needs need to be acknowledged for having additional needs rather than medical problems:

We were told, by a special education teacher, that our child could not learn and that none of the kids can learn. Our son is currently homeschooled. He is aged eight. At the moment he is doing age 10 maths. He is doing age 11 reading because he taught himself to read. He is doing music at age nine level. He is above in multiple areas. There are areas that he struggles with, but we need to be seeing these as children with learning needs, not as medical problems.¹⁰⁶

- 2.35** For Ms Comisky, the difference between a positive, supportive and inclusive mainstream school experience and a distressing and potentially harmful one is attitude. She explained that a shift in attitude towards students with disability is required if there is to be any change in the culture of the education system:

... I keep thinking to myself: what is the one thing that would have made all the difference to my son’s schooling experience and potentially helped us to avoid the circumstances that we endure today? And I have to be honest, it all keeps coming back to attitudes ...

I feel that if we want to change the culture within some schools, then it is crucial to shift the attitudes first... I cannot stress enough just how important it is to begin to shift the attitudes of seeing kids with disabilities as challenging and difficult, but instead to begin to see them as individuals who just need a little more assistance in order to reach their potential.¹⁰⁷

- 2.36** The following sections explore the direct impact of stigma and discrimination on students with disabilities and their families and the fallout of a system some say is designed and resourced to put such students at a disadvantage. It reflects on the lived reality of students, parents, teachers and schools – one where there is ill-treatment and abuse, great inconsistency

¹⁰⁴ Evidence, Ms Anne Flint, Executive Member, Special Education Principals and Leaders Association, 27 March 2017, p 55.

¹⁰⁵ Submission 173, Mrs Gina Wilson-Burns, p 1.

¹⁰⁶ Evidence, Mr Roy, 27 March 2017, p 22.

¹⁰⁷ Evidence, Ms Comisky, 19 May 2017, p 11.

in the quality of education and support being provided, huge pressure on teachers to deliver educational outcomes where resources are limited, an increased prevalence and complexity of disability presenting at mainstream schools, and enrolment trends that have brought new challenges to teachers and students across educational settings.

Allegations of ill-treatment and abuse

- 2.37** One of the most significant realities highlighted in the current inquiry is that many children with disabilities and special needs are, in one form or another, suffering. A number of stakeholders gave evidence about the mistreatment and abuse of such students, ranging from a ‘subtle, monotonous and insidious abuse’¹⁰⁸ to the blatant harm and injury endured by some. Inquiry participants also spoke of certain behavior management practices being engaged as punitive measures for students with disability, which would not otherwise be deemed acceptable for students without disability.
- 2.38** For example, Dr Sally Robinson, Senior Research Fellow at the Centre for Children and Young People, Southern Cross University, explained that in her research students with disability referred to the ‘drip, drip, drip’ of harm in their lives, in contrast to the critical incidents that parents report:
- ... when you speak to children and young people with disability about their experience of safety and harm at school, they say different things than their families say and that education professionals say. What they talk about is how chronic harm is in their lives. They talk about the drip, drip, drip of things that happen... They talk about being insulted and ignored and minimised. They talk about how those things build up in their lives ...
- They talked about things like people speaking badly to them, people making threats to them, the sort of cruel nicknames that people had for them, through to verbal abuse and physical abuse and incidents of harm. What their families talked about were critical incident-type harms, the things that eventually built to something that people came home with, or another person told them about, or a teacher reported home to.¹⁰⁹
- 2.39** One parent of a child with intellectual disability, sensory issues, fine motor and gross motor delay, mobility issues, and uncontrolled epilepsy, advised that, among other examples of poor treatment, offensive comments were made about their daughter having ‘very poor mobility skills’, and support with toileting was dismissed out of ignorance and a complete lack of understanding of their daughter’s disabilities.¹¹⁰
- 2.40** Advocacy organisations, such as Children and Young People with Disability Australia and Family Advocacy, reported other examples of this kind of treatment, including one student being excluded from various school activities ‘just in case he embarrassed the school’, another being told they are ‘a risk to others’, another being ‘shut down when trying to talk or express

¹⁰⁸ Evidence, Dr Sally Robinson, Senior Research Fellow, Centre for Children and Young People, Southern Cross University, 8 June 2017, p 21.

¹⁰⁹ Evidence, Dr Robinson, 8 June 2017, p 21.

¹¹⁰ Submission 414, Name suppressed, p 2.

his needs', and another being labeled 'naughty' rather than being acknowledged as having a learning difficulty.¹¹¹

- 2.41** Other inquiry participants spoke of the more blatant abuses suffered by students with disabilities and special needs, such as 'caging and isolation... in a blackened out cupboard', facial and head injuries and unexplained bruising,¹¹² 'severe and bloody injury' and 'permanent scarring to multiple body sites',¹¹³ being 'violently yanked and dragged into classroom',¹¹⁴ being 'pinned to the ground',¹¹⁵ and sustaining carpet burns.¹¹⁶
- 2.42** One parent described how their autistic daughter was once 'happy, settled, confident, compliant, anxiety-free and excited to be with other children' prior to entering kindergarten. However, as she entered primary education, 'things quickly deteriorated and the consequences of that enrolment have forever changed the course of her life'.¹¹⁷ The parent stated that, on one occasion, she witnessed their daughter being hit by a staff member: 'The staff member picked up a large stick, covered in leaves and off shot branches, and proceeded hitting over our daughter's head.' On another, their daughter was 'violently yanked and dragged into the classroom' to be kept in there under distressing circumstances, resulting in injury to the child:

She did nothing to deserve this use of force. She was being quite lovely and compliant. She was even smiling at everyone. It was shocking. My daughter looked confused and panicked at being suddenly assailed. She screamed for me. The teacher got her forcefully through the door and the door was shut. I was left standing in the hallway stunned. An unknown employee then ordered me off campus. My daughter was screaming from within the classroom. I said nothing. The employee then said 'You better leave now!' Her face was only inches from mine, her manner threatening and aggressive. I said 'I will not leave. My child was just dragged into that room.' The woman left. My daughter continued to scream and cry hysterically from within the classroom. I stayed in the hall. I started to text my husband for help. At one point, I heard her screaming 'Let go me! Let go me!' She continued to scream nonstop for over 40 minutes. Half way through that time someone turned off the lights and the classroom was in darkness. My daughter was screaming now in the dark. I could not see into the classroom as the door was locked and the windows were largely covered with art work. ... a school employee, came and stood with me in the hallway through some portion of this time. After the lights were turned off I said 'What are they doing????' [The employee] said to me 'Do you think this is fair to the other children? Isn't there a place that takes these kinds of kids?' After 40 minutes of screaming, my daughter quieted ... I went outside to wait for my daughter. When she was brought out to me, she was traumatised. She had a box of crayons as a gift and was shaking and saying quietly over and over '[I] not cry now...' My daughter had a pink arm. As this faded you could see three handprints. One at her wrist, one further up, and one on the back of her upper arm. Upon taking off her uniform, she had marks above her right underarm. She had a reddened torso and terribly reddened side. I asked my

¹¹¹ Submission 159, Children and Young People with Disability Australia, p 4; Submission 151, Family Advocacy, p 7.

¹¹² Submission 19, Name suppressed, p 2.

¹¹³ Submission 146, Name suppressed, p1.

¹¹⁴ Submission 169, Name suppressed, p 2.

¹¹⁵ Submission 201, Name suppressed, p 1.

¹¹⁶ *In camera* evidence, Witness A, 8 May 2017, p 1, published by resolution of the committee.

¹¹⁷ Submission 169, Name suppressed, p 1.

daughter if Teacher did this. She said ‘Yes. [I] not cry now...’ By the next day, most had faded, but the marks above her armpit and the one at her side were still there. [The day after]...they had turned purple.¹¹⁸

2.43 The committee was also advised by advocacy organisations of other serious cases that had been reported to them, including cases of a child being locked in a storeroom, another being ‘dragged [into a] fenced-in outdoor area by himself in the middle of winter without a jumper’ with the blinds closed on him so he couldn’t see into the room,¹¹⁹ and in some instances, sexual and physical assault.¹²⁰

2.44 With these examples of ill-treatment and abuse, inquiry participants drew particular attention to the increasing use of certain behaviour management practices as punitive measures for students with disabilities and special needs. For example, Ms Gotlib, stated that ‘we are getting increasing reports of restraint and seclusion’, arguing that:

... we have fundamental issues within the provision of education to kids with disability, so therefore are getting crisis after crisis. Kids’ behaviours are exacerbating ... We get inadequate responses... from schools, where they respond with violence to behaviours of concern and it all snowballs.¹²¹

2.45 Others spoke of suspensions being used frequently and inappropriately on students with disabilities and special needs.¹²² For example, Ms Alex Baltins, parent of a child with autism, sleep initiation disorder, sensory processing, severe attention deficit hyperactivity disorder and oppositional defiant disorder, shared how her son was ‘relentlessly bullied’ but was suspended for lesser behaviours:

In the final week of my son attending that school I was told they had found some children at after-school care plotting what they could do to him the next day. Those children were given verbal warnings but my son was given two suspensions within two weeks for lesser behaviours.¹²³

2.46 This evidence broadly reflects the findings of the NSW Ombudsman’s inquiry into behaviour management in schools, which found that restrictive practices were being used in ways inconsistent with and contrary to the intentions and guidelines for their use.¹²⁴ Similarly, the report indicated that suspensions were being used as a general measure to reduce disruption to classrooms, despite there being no evidence to suggest that it would.¹²⁵ The report indicated that research in fact shows suspensions may exacerbate challenging behaviours for student with disability.¹²⁶

¹¹⁸ Submission 169, Name suppressed, pp 2-3.

¹¹⁹ Submission 159, Children and Young People with Disability Australia, p 4.

¹²⁰ Submission 198, People with Disability, pp 10-11.

¹²¹ Evidence, Ms Gotlib, 3 April 2017, pp 52-53.

¹²² For example, Submission 15, Name suppressed, p 1; Submission 418a, Name suppressed, pp 1-2; Submission 154, Uniting, pp 21-22.

¹²³ Evidence, Ms Alex Baltins, Member, Children and Young People with Disability Australia, 3 April 2017, p 52.

¹²⁴ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 32.

¹²⁵ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 41.

¹²⁶ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), pp ix-x.

2.47 According to Ms Finch, People with Disability Australia, students with disabilities are often subject to practices that would not otherwise be deemed lawful or acceptable for students without disability:

In addition, the use of restrictive practices and isolation is commonplace for 'behaviour management' of students with disability despite the fact that these constitute abuse or at least reportable conduct and under no circumstances would be deemed appropriate for students without disability.¹²⁷

2.48 Parents discussed the emotional toll this treatment has taken on their children and the deep trauma they live with as a result. Mrs Comiskey commented:

It makes me absolutely sick to my stomach to know that all too often kids with disabilities are being horrendously abused, bullied, isolated, prevented from distance education and/or discriminated against within our school system, and often to the point of suicide and self-harming ...¹²⁸

2.49 Dr Heyworth, parent, gave the example of her young son who 'became clinically depressed and indeed suicidal because he was marked out as so different from his peers'.¹²⁹ She declared: 'There should be no child at age six who feels so deeply that they do not fit into a mainstream school that their option is to end their life. It is not an acceptable way of treating our children'.¹³⁰

2.50 Mr Roy asserted that many children end up having to be medicated because of anxiety and post-traumatic stress. He contended: 'We now have a situation where we are medicating our children to cope with the damage done by the education system. We are medicating them with serious psychotropic drugs'.¹³¹

2.51 Dr Heyworth confirmed this as her experience, explaining that her son still requires medication for anxiety even though he is now homeschooled. Dr Heyworth also spoke of parents who were advised not to take their son off medication 'because the school felt he was far more compliant on medication'.¹³² She questioned whether 'compliance should be the ultimate goal for any child', stating: 'Certainly schools can have a say, but the medication space is not a school space'.¹³³

2.52 As a result, the committee heard that an increasing number of parents are withdrawing their children from mainstream schooling, and either seeking placement in a specialised setting¹³⁴ or removing them from the education system altogether.¹³⁵

¹²⁷ Evidence, Ms Finch, Manager, 3 April 2017 p 39.

¹²⁸ Evidence, Mrs Comiskey, 19 May 2017, p 11.

¹²⁹ Evidence, Dr Heyworth, 27 March 2017, p 30.

¹³⁰ Evidence, Dr Heyworth, 27 March 2017, p 30.

¹³¹ Evidence, Mr Roy, 27 March 2017, p 34.

¹³² Evidence, Dr Heyworth, 27 March 2017, p 34.

¹³³ Evidence, Dr Heyworth, 27 March 2017, p 34.

¹³⁴ For example, Submission 151, Family Advocacy, p 10; Submission 147, Mrs Meaghan Sweeney, p 2; Evidence, Dr Rachel Sowden, Parent and New England Delegate, Federation of Parents and Citizens Associations of New South Wales, 3 April 2017, p 36.

- 2.53** For example, one inquiry participant shared that their son was ‘failed’ in the government school sector, having been identified with complex learning, emotional and social needs. He stated that ‘we had no choice but to withdraw him. We are unable to afford any form of private schooling... and so we homeschool him’.¹³⁵
- 2.54** Indeed, a number of parents talked about being robbed of choice when it came to the education of their child.¹³⁷ For example, Dr Heyworth advised that parents are being told to send their children to support units because ‘at least they might understand’ the disability. She stated: ‘It is very disappointing that I do not seem to have a choice because I am being told that mainstream schools will not understand my child so I should send him to a segregated unit’.¹³⁸
- 2.55** Parental choice and enrolment will be discussed further in Chapter 4.

Inconsistency in the quality of education

- 2.56** Another reality experienced by many students with disabilities and special needs is the significant inconsistency in the quality of education and support being delivered by schools across the state. Many described mixed experiences within the education system, with some parents likening it to a ‘lucky dip’ where a school’s reception and treatment of a student with disability is unknown and unpredictable.
- 2.57** One the one hand, the committee heard examples of schools practicing genuine inclusion and a positive, embracing attitude towards students with disabilities and special needs. On the other, some schools were reported as demonstrating the exact opposite.¹³⁹
- 2.58** For example, Mrs Wilson-Burns described how her son, who is profoundly disabled, once experienced ‘best practice examples of inclusive education’, was a valued member of his school community and enjoyed academic success in his local mainstream primary school.¹⁴⁰ However, she expressed deep frustration over ‘the complete breakdown of all social and academic opportunities simply by moving 3km up the road to a high school’.¹⁴¹ Mrs Wilson-Burns described her son as now being ‘socially isolated and being denied meaningful academic participation through the failure of appropriate supports... and worse, this 13 year old is being judged...’.¹⁴²

¹³⁵ For example, Submission 151, Family Advocacy, p 8; Evidence, Mr Roy, 27 March 2017, p 25; Evidence, Mrs Comiskey, 19 May 2017, p 11; *In camera* evidence, Witness E, 19 May 2017, p 3, published by resolution of the committee; *In camera* evidence, Witness A, 8 May 2017, p 2, published by resolution of the committee.

¹³⁶ Submission 24, Name suppressed, p 1.

¹³⁷ For example, Evidence, Mrs Comiskey, 19 May 2017, p 11; *In camera* evidence, Witness E, 19 May 2017, p 3, published by resolution of the committee.

¹³⁸ Evidence, Dr Heyworth, 27 March 2017, p 21.

¹³⁹ For example, Evidence, Ms Baltins, 3 April 2017, p 54; Evidence, Ms Lee Duncan, Parent, 8 June 2017, p 18; *In camera* evidence, Witness A, 8 May 2017, p 1, published by resolution of the committee.

¹⁴⁰ Submission 173, Mrs Gina Wilson-Burns, p 1.

¹⁴¹ Submission 173, Mrs Gina Wilson-Burns, p 1.

¹⁴² Submission 173, Mrs Gina Wilson-Burns, p 1.

2.59 Similarly, another inquiry participant revealed that her teenage son, who has autism, Tourette Syndrome, and severe gross and fine motor delay, experienced the best and worst of a mainstream school education. Of the best, she stated: ‘What I have learnt is that good education and inclusion IS achievable’.¹⁴³ She explained:

...in the good years, he had teachers and principals who accepted his disability, treated him as a good person, spoke directly to that person, worked with his strengths, encouraged other children in the class to interact with and help him and were creative and supportive in helping him behave well. The teachers in those years truly believed in his right to be there with the other children and the benefits to the other children in knowing and working with my son. In the good years, difficulties were regarded as problems to be solved, and there was open communication with his father and me who were regarded as part of the problem solving team rather than part of the problem. In the good years, his teachers supported to find creative ways to help him rather than fearing censure from above for doing something different. In those years we had a team approach with benefitted my son, his teachers and his class.¹⁴⁴

2.60 She stated, however, that she dreamed of a time ‘when this sort of acceptance is the norm and not the exception’, as her son was placed in a support unit in high school where he was isolated from the rest of the student body and denied access to mainstream classes. Under these conditions, the inquiry participant advised that ‘discipline was punitive and education followed a cookie cutter approach with no support for my son’s individual strengths and deficits’.¹⁴⁵

2.61 Ms Alex Baltins, parent and member of Children and Young People with Disability Australia, also shared the mixed experience of schools that her son attended, and called for greater consistency in the way education environments treat students with disabilities and special needs:

I have experienced one where my son became invisible in the system. He was completely removed, bullying was denied and every poor practice of the school against my child was completely and utterly denied even though there was evidence. Now, moving across to the new school, they have read the reports, they have seen everything—they have seen the evidence as well—and they are the complete opposite. I think it is really important that we find a way to get all schools to be really consistent and treat our children equally.¹⁴⁶

2.62 Sharing these experiences, Mr Tobias Cook, a former student with dyspraxia, gave evidence to the committee about the mix of schools he attended, ranging from one he ‘cannot speak highly enough of’ for their support, to others that practiced a ‘black and white’ approach to disability. Mr Cook discussed one school in particular where he was told he ‘belonged’ in a support class because of his disability, even though he stated ‘I was more than capable of keeping up with the curriculum and keeping up with my fellow students’.¹⁴⁷ Mr Cook remarked: ‘The ignorance on display there was astounding. There was such a lack of

¹⁴³ Submission 15, Name suppressed, p 1.

¹⁴⁴ Submission 15, Name suppressed, p 2.

¹⁴⁵ Submission 15, Name suppressed, p 1.

¹⁴⁶ Evidence, Ms Baltins, 3 April 2017, p 54.

¹⁴⁷ Evidence, Mr Tobias Cook, 23 June 2017, p 83.

understanding though he was an educator in charge of a school. You would think that he would make an attempt to learn about the variety of learning disabilities, but I guess not.’¹⁴⁸

- 2.63** Some parents concluded that it was indeed a ‘lucky dip’ with schools, with numerous inquiry participants pointing to the principal and culture of the school as being the point of difference.¹⁴⁹
- 2.64** For example, Dr Heyworth asserted: ‘I think “lottery” is the right word. You take pot luck and you hope for the best; quite often you get very far from the best...’.¹⁵⁰ Mrs Comiskey concurred, stating that ‘it is a lucky dip with schools. I have actually found that. I have a child who is now in mainstream and he is in a lot better school than previously. It comes down to the principal and the culture of that school.’¹⁵¹
- 2.65** This view is largely consistent with the findings of the NSW Ombudsman in its inquiry into behavior management, which considered the role of the principal and school leadership in determining a culture of inclusion within the school.¹⁵²
- 2.66** School leadership will be considered in Chapter 5.

Segregated settings

- 2.67** As outlined earlier, while inclusion is promoted across the education sectors, segregated settings, such as support units and special schools, continue to exist today. During the inquiry, the committee found considerable debate over the appropriateness of such settings and whether there is a place for such settings within an inclusionary education policy.
- 2.68** While the committee found a widespread acceptance throughout the inquiry that providing an inclusive educational experience to students with disabilities and special needs is best practice, some inquiry participants strongly argued for full inclusion, that is, full participation of all students with disability, including the most profoundly disabled, in a mainstream classroom environment. These inquiry participants asserted that what is best practice for students with disability is best practice for all students, and so genuine inclusion should be sought and implemented.¹⁵³
- 2.69** Following on from this, some argued that until segregated settings are abandoned, discrimination against students with disabilities and special needs will persist.¹⁵⁴ As Mrs Sweeney stated: ‘Until there is only one system of education for all students continued discrimination is bound to occur’.¹⁵⁵

¹⁴⁸ Evidence, Mr Cook, 23 June 2017, p 83.

¹⁴⁹ For example, Submission 173, Mrs Gina Wilson-Burns, p 1.

¹⁵⁰ Evidence, Dr Heyworth, 27 March 2017, p 21.

¹⁵¹ Evidence, Mrs Comiskey, 19 May 2017, p 18.

¹⁵² NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p viii.

¹⁵³ For example, Submission 207, Name suppressed, p 4; Submission 151, Family Advocacy, p 9; Submission 190, Name suppressed, p 1.

¹⁵⁴ For example, Submission 151, Family Advocacy, p 7; Submission 61, Name suppressed, p 5; Submission 173, Mrs Gina Wilson-Burns, p 3; Submission 190, Name suppressed, p 1.

¹⁵⁵ Submission 147, Mrs Meaghan Sweeney, p 3.

- 2.70** According to People with Disability Australia, students with disability are not given the same opportunity to pursue educational pathways because of these segregated classes and schools:
- ...special schools and support units continue the systemic segregation of children and young people, which denies them the rights they are entitled ... As a result of these segregated educational arrangements ... children and young people with disability are diverted from pursuing educational opportunities to the same degree as their peers ... Students in support units are often excluded from external educational programs offered to their peers. This not only exacerbates the feeling of exclusion and discrimination for students, but actively disadvantages them in areas deemed important for other students.¹⁵⁶
- 2.71** Moreover, some suggested that if special schools and support units were to close, funding and resources could be redirected from these segregated settings into mainstream schools, thereby benefitting all students.¹⁵⁷
- 2.72** Others, however, argued that there is in fact a place – and a need – for support units and special schools, and that the presence of such settings can be reconciled with an inclusive approach to education.¹⁵⁸ A number of inquiry participants, including many representatives of the special education sector, maintained that students with disabilities should not be subject to a ‘one-size fits all’ approach and need access to the educational setting that can draw the best learning outcomes. For example, Ms Rowena Perritt, Deputy National Director, Aspect Education, Autism Spectrum Australia, asserted that there are ‘positives and negatives’ in all education settings, however, ‘every school system does not fit the needs of every child’.¹⁵⁹
- 2.73** Mr Bart Cavalletto, Director, Services, Royal Institute for Deaf and Blind Children, shared a similar view, arguing that students with disabilities do not have the same range of schooling options available to them as all other students thereby making it critical that they ‘have access to schools that best match their individual needs and optimise their outcomes and their potential on the same basis as their peers’.¹⁶⁰
- 2.74** Some stakeholders acknowledged that, despite all efforts to provide a positive mainstream education, and often only after such efforts are exhausted, does it become apparent that a student may require a more specialised setting. For example, one inquiry participant, who is both a teacher and parent of a child with disability, argued for the need to acknowledge that “‘full integration’ doesn’t work each and every time’ and that ‘SSP schools have a place for many students’.¹⁶¹
- 2.75** From a teacher’s perspective, Ms Margaret Wilkins, Acting Head Teacher Personalised Learning, Rooty High School, told the committee about students who have additional learning

¹⁵⁶ Submission 198, People with Disability Australia, pp 6-7.

¹⁵⁷ Submission 188, Name suppressed, p 2.

¹⁵⁸ For example, Submission 24, Name suppressed, p 1; Submission 155, NSW Primary Principals’ Association, p 3.

¹⁵⁹ Evidence, Ms Rowena Perritt, Deputy National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 73.

¹⁶⁰ Evidence, Mr Bart Cavalletto, Director, Services, Royal Institute for Deaf and Blind Children, 23 June 2017, p 2.

¹⁶¹ Submission 24, Name suppressed, p 1.

needs because of challenging behavior that may be rooted in childhood trauma. She explained the impact of such behavior on all students, including themselves, and the need for specialised settings in cases where the mainstream environment has not worked:

We also have in our demographic area, and there will be in every demographic area, kids who also have a disability by their challenging behaviour. Because of childhood trauma, because of things that have happened to them in their past, you cannot fix everybody. Some kids will have behaviour that affects not only their own learning but the learning of other children in that classroom. When we have tried everything, we need to get a placement for those children.¹⁶²

2.76 Dr Rachel Sowden, New England Delegate of the Federation of Parents and Citizens Associations of New South Wales and parent of children with mental health diagnoses and other co-morbidities, recounted her personal experience of wanting a mainstream education for her son but found that a support class was more suited to his needs. She empathised with parents who sought a mainstream classroom setting for their children but raised the concern that ‘under the current system’ mainstream teachers did not have the appropriate skills to support students with disability:

Many parents start off saying that their child will be included. You want your child to be differentiated but also included. You want them to be able to go to the pub when they turn 18 and know their friends because they went to school with them. As a parent, that is what you want... Sometimes, as they fall further and further behind, or their behaviour becomes worse and worse, parents decide that their child will have to be moved... There is a real desire on the part of parents to have their child in mainstream education. However, they do not want their child to be told not to sit the NAPLAN test, or any of those things. As you get further into the education system, you see that under the current system the teachers in the support classes have the best skills and smaller classes. You might not want your child in one of those classes, but—

... My child's support class is amazing, and the school that my children currently go to is amazing...¹⁶³

2.77 While acknowledging the wide range of views on the most appropriate learning environment for a student with disability, a number of inquiry participants asserted that ultimately the question is not one of which educational setting is best but rather which is best for the student. For example, Mr Peter Skinner, President, Special Education Principals and Leaders Association, spoke of the quality of educational experience and producing the best outcomes for students with disabilities and special needs, regardless of the setting. He explained:

... our concern probably is not on where the students are placed; it is more on the quality of educational experience they have when they are there. If we are providing an excellent education for our students and we have great social outcomes for our students, and they get to engage with their peers, then that is the best outcome for them and if we have got the resources to be able to do that, then fantastic. Similarly, with our primary colleagues and our high school colleagues, their outcomes I guess

¹⁶² Evidence, Ms Margaret Wilkins, Acting Head Teacher Personalised Learning, Rooty High School, 23 June 2017, p 52.

¹⁶³ Evidence, Dr Sowden, 3 April 2017, p 36.

would be the same. If the educational experience is great and the social experience is fantastic, then we are ticking all the boxes we need to tick as leaders.¹⁶⁴

- 2.78** Dr Iva Strnadova, Associate Professor in Special Education, School of Education, University of New South Wales, expressed a similar view, cautioning against a discussion about the ‘better’ setting. She commented that mainstream classroom environments may indeed be most beneficial but only if they have the appropriate supports in place. Dr Strnadova stated:

... I would be very worried if the discussion turned into “special educational settings are better than inclusive settings”. That is not what we are talking about here. We are talking about asking: “What is best for the child?” For a majority of children who have disabilities or difficulties, the mainstream settings are a good place to study at but they need to have supports in place and they need to have educated teachers who understand evidence-based practices. I am just cautioning about this issue.¹⁶⁵

- 2.79** This view was echoed by Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, who stressed the importance of highly skilled teachers to manage and educate students with disabilities and special needs in mainstream classrooms, noting that without such skill there could be dire consequences. Dr Kemp insisted that inclusion is not just about inclusion in school but ‘inclusion in life’:

...there are some kids of whom she will say to the parents: ‘You need to put that child back in the mainstream. He or she will benefit more from mainstream.’ But for other kids I have seen the most tragic situations in mainstream schools because teachers do not know what they are doing. What you are really doing is limiting the inclusion for that kid in the long term. Do not forget inclusion is about inclusion in life, not just inclusion in an educational institution. We need to be working to make sure that child has the best opportunity to be included in the wider community.¹⁶⁶

- 2.80** As indicated earlier, Chapter 5 will consider teacher quality in greater detail.

The pressure on teachers

- 2.81** While the committee heard from many parents about the experiences of their children with disabilities and special needs, the committee also received considerable evidence from teachers across all education settings about their lived reality. Many teachers and schools, from the mainstream environment in particular, expressed deep concerns about how moves towards a more inclusive education system have not been appropriately matched by resources and support.¹⁶⁷ As a result, teachers reported feeling overwhelmed, stressed and under significant

¹⁶⁴ Evidence, Mr Skinner, 23 March 2017, p 44.

¹⁶⁵ Evidence, Dr Iva Strnadova, Associate Professor in Special Education, School of Education, University of New South Wales, 3 April 2017, p 30.

¹⁶⁶ Evidence, Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, 3 April 2017, pp 29-30.

¹⁶⁷ For example, Submission 185, Ms Barbara Kirszman, p 1; Submission 326, Ms Amanda Wells, p 1; Submission 360, Mr Elvin Cansino, p 1; Submission 379, Name suppressed, p 1; Submission 354, Fairfield Public School, p 1; Submission 364, Name suppressed, p 1; Submission 4, Mr Brett Holland, p 2.

pressure to provide quality education that meets the needs of their students, especially those with disabilities and special needs.¹⁶⁸

- 2.82** For example, Sir Joseph Banks High School acknowledged the right and need to provide an inclusive education to students with disability, however, argued that necessary resourcing must accompany it:

... students, rightly so, are given opportunities to live, learn, function and be integral members of our school communities. This is wonderful, however, along with ‘voice’ come necessary resourcing to carry out the task of supporting our students, without burning out our leaders, teachers and amazing support staff.¹⁶⁹

- 2.83** Likewise, Mr Allen Slater, teacher, asserted that students with disabilities and special needs have entered into mainstream environments without the appropriate mechanisms in place to ensure that they are both safe and supported:

Governments have mainstreamed students with disabilities without the correct resources to schools including staffing, additional resources in medical, physical changes to the school and appropriate technology incorporating assimilation and programs which ensure all students have a safe and supportive environment.

...

It is not the students with disabilities or special needs that are the problem; it is the mainstreaming of these students into regular classrooms without the appropriate support and resourcing mechanisms being put in place.¹⁷⁰

- 2.84** Mr Chris Presland, President, NSW Secondary Principals’ Council, explained that more resources – ‘both human and non-human’ – are needed if teachers and schools are to support the right of every student to ‘receive the highest quality education and to become successful, lifelong learners’.¹⁷¹

- 2.85** Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, acknowledged that, for the government sector, ‘the department and individual public schools deal with every day constraints that are practical and real.’¹⁷² However, many teachers argued that these constraints are too great, placing enormous pressure on teachers. As one inquiry participant stated: ‘Too often, as a teacher, I feel systemically unsupported...’.¹⁷³

- 2.86** For example, one inquiry participant described teachers as feeling ‘overwhelmed’ by the varying degree of need within the classroom, the limited resources available and having little time to provide learning programs for all students:

¹⁶⁸ For example, Submission 323, Name suppressed, p 2, Submission 322, Mr John Deehan, p 1; Submission 378, Name suppressed, p 2; Submission 223, Name suppressed, p 1.

¹⁶⁹ Submission 206, Sir Joseph Banks High School, p 2.

¹⁷⁰ Submission 6, Mr Allen Slater, p 1 and p 2.

¹⁷¹ Evidence, Mr Chris Presland, President, NSW Secondary Principals’ Council, 27 March 2017, p 37.

¹⁷² Evidence, Ms Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, 27 March 2017, p 2.

¹⁷³ Submission 114, Name suppressed, p 1.

Teachers feel overwhelmed by the level of differentiation that is required in the classroom. They do not feel that they have the level of expertise to meet the huge discrepancies in the abilities within their class. They have a limited amount of resources available as these resources are spread over the whole school. There are no trained teachers who we can call on to give specific specialised support, eg. itinerant teachers for behaviour, special education experts etc. The reduction of funding has meant that students who we used to be able to provide assistance to are no longer catered for on an individual level. The amount of time needed to provide a quality program for children with specific learning needs is not manageable as well as preparing for the other students in the class.¹⁷⁴

- 2.87** Ms Jan Pennisi, teacher, agreed, stating that it is extremely difficult for teachers to deliver quality, personalised learning:

We talk all the time about meeting individual needs, levelling playing fields and those sorts of things, but it is all but impossible for many of our teachers with the complexity in the classroom to do that. It is a really, really difficult.¹⁷⁵

- 2.88** One principal shared the personal impact of inadequate support for students with disabilities and special needs, highlighting that staff go ‘above and beyond’ what is required of them but still cannot meet students’ needs given the many and varied factors at play:

I am a school principal currently on leave/workers compensation as a direct result of issues arising from inadequate provision of resources to support the needs of students with disabilities. My rural school has three support units and a considerable number of students with disabilities in mainstream classes. Provision of staffing is inadequate to meet the emotional, learning and behavioural needs of these students. The staff in my school go above and beyond what is expected of them but still cannot meet all the needs of students. Issues related to violent student behaviour, regular lockdowns, high staff turnover, inadequate time to meet accountability requirements, work with other agencies, meet with parents, develop and update learning and risk management plans and access the resources students are all significant factors.¹⁷⁶

- 2.89** Similarly, Smithfield Public School provided a case study of a teacher who taught an autism class for students with moderate intellectual disabilities, including multiple disabilities and challenging behavior. The school described the teacher as being subject to violent behavior – ‘hit, kicked, punched, bitten’ – by two students that required placement in a special school but for whom there was no vacancy. Smithfield Public School advised: ‘The constant challenging behaviour caused Mrs T to go on stress leave as her mental wellbeing was being compromised. The following year Mrs T relinquished her position from the Department of Education’.¹⁷⁷

- 2.90** For many inquiry participants, the constraints placed on teachers and schools are primarily quantified in funding and resources. Time and again the committee heard from stakeholders that there is just not enough money to cater to the full extent of student need within schools across the settings. For example, one teacher advised of the range of disabilities and special

¹⁷⁴ Submission 215, Name suppressed, p 1.

¹⁷⁵ Evidence, Ms Jan Pennisi, Teacher, 8 May 2017, p 5.

¹⁷⁶ Submission 106, Mr Chris Hauritz, p 1.

¹⁷⁷ Submission 195, Smithfield Public School, p 12.

needs in their mainstream classroom, none of whom qualified for additional funding or support. The teacher expressed how difficult it was to teach and improve learning outcomes for all students in the class:

Last year alone, in my mainstream Kindergarten class I had 6 students diagnosed with ASD, 3 students with speech problems and 2 with a borderline intellectual impairment. Not one of these students qualified for ANY additional support or funding. As a mainstream teacher with a class of 20 little individuals I find it extremely difficult to cater to all the diverse needs of all these very different little people. Despite appealing for additional support, I am constantly being told that students aren't ticking all the necessary boxes to qualify. The process for Integration Funding is so restrictive that students with confirmed disabilities are being denied access and therefore do not have equitable access to education and improved learning outcomes.¹⁷⁸

- 2.91** Teachers within the non-government sector shared these concerns. According to Ms Pam Smith, Assistant Secretary and Women and Equity Committee Convenor, NSW Independent Education Union, 'there are significant pressures to spread the resourcing as far as possible because of unmet need'.¹⁷⁹
- 2.92** Ms Claudia Vera, Organiser, NSW Teachers Federation, concluded that government inaction and a 'shrinking contribution to disability funding' demonstrates a 'wilful negligence that is discriminatory, regressive, life-impacting and financially irresponsible'.¹⁸⁰
- 2.93** Concerns around the inadequacy of funding will be examined further in Chapter 3.
- 2.94** Many teachers also shared their experiences in the classroom, highlighting the daily struggles they face in catering to an increasing complexity and diversity of student need.¹⁸¹ For example, one teacher described having as many as 14 students in the one mainstream class requiring in some cases significant adjustments to their learning, but not receiving any funding to support them. The teacher stated: 'Terrible pressure on the teachers and terrible situation for our students'.¹⁸²
- 2.95** One teacher drew comparisons between the funding support previously provided to students with disabilities and the support provided now, when classrooms are comprised of increasing numbers of students with additional learning needs. The teacher described the impact not only on themselves as the teacher but on all students in the class, including those without disability:

When I began teaching in 1996 I remember vividly that funding was generous. This was when we were told that when students were being 'fully integrated' they would receive lots of funding and assistance as they were not taking up very expensive places at SSP Schools (Schools for Specific Purposes) and so they were SAVING the government money...

¹⁷⁸ Submission 114, Name suppressed, p 1.

¹⁷⁹ Evidence, Ms Pam Smith, Assistant Secretary and Women and Equity Committee Convenor, NSW Independent Education Union, 3 April 2017, p 16.

¹⁸⁰ Evidence, Ms Vera, 3 April 2017, p 2.

¹⁸¹ For example, Submission 218, Name suppressed, p 1; Submission 321, Name suppressed, p 1; Submission 272, Name suppressed, p 1; Submission 108, Name suppressed, pp 1-2; Submission 62, Name suppressed, p 1.

¹⁸² Submission 307, Name suppressed, p 1.

These days are LONG gone.

Now IM [mild intellectual disability] kids receive NO specialised funding. So in one generation, they have gone from 'needing' a five day a week aide, to now 'not needing' them at all. This is absurd. My Down's students once had four or five days a week aide support, and now we get none. This causes immense pressure on the classroom teacher as well as the rest of the students in the class. The teacher, in most cases, has no other choice but to sit with these high needs kids to provide support (rightly so) however the other students receive little support for themselves, often they need to make do with other kids who provide peer-tutoring as the teacher physically can't do it all. ...

My concerns at present is that as a teacher I am unable to do my job as I was once able to. My classes now have on average five special needs students. Usually two have Autism Spectrum Disorder and three other students have a range of needs including intellectual disabilities, physical disabilities and also mental health needs. A class with five vulnerable students and twenty-five regular students, and having no support is just so hard. I may be fortunate enough to have an SLSO [School Learning Support Officer](new term for teacher's aide) a few hours a week, but to be honest, sometimes this is just a waste of time as the vulnerable kids find this haphazard approach difficult to manage.¹⁸³

- 2.96** Mr Presland, NSW Secondary Principals' Council, advised that 'teachers are finding it difficult to cope' with the volume of students presenting with disabilities and special needs in regular classrooms. He explained:

...despite the additional funding provided to support schools in the provision of education to students with disabilities or special needs, there is a growing number of students with diverse disabilities being integrated into mainstream schools. As a result, teachers find it difficult to cope, even with additional resources. Teachers put the education of their students first, but they are finding it more and more difficult to cope with the many students with disabilities or special needs in their classes.¹⁸⁴

- 2.97** Despite the pressures, teachers and schools repeatedly expressed their passion and commitment to providing quality education for their students, including those with disabilities and special needs.¹⁸⁵ For example, Mr Jack Galvin Waight, teacher and organiser for the NSW Teachers Federation, said that in his capacity as organiser for the Hunter region '[a]t meetings with those teachers I am continually amazed at their commitment, their dedication and their passion for teaching students with disabilities'.¹⁸⁶ Likewise, of special educators, Mr Skinner, from the Special Education Principals' and Leaders' Association, stated that they 'face the most complex learners in the education system with passion, enthusiasm and creativity'.¹⁸⁷

- 2.98** Ms Sarah Rudling, Principal of Barrack Heights High, told the committee that 81 per cent of her school population were identified and included in the Nationally Consistent Collection of

¹⁸³ Submission 24, Name suppressed, p 1.

¹⁸⁴ Evidence, Mr Presland, 27 March 2017, p 38.

¹⁸⁵ For example, Evidence, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, 27 March 2017, p 36; Submission 356, Name suppressed, p 2.

¹⁸⁶ Evidence, Mr Jack Galvin Waight, teacher, 8 May 2017, p 2.

¹⁸⁷ Evidence, Mr Skinner, 27 March 2017, p 39.

Data for students with a disability. She expressed deep pride in her school and a commitment to ‘educational excellence for all’, acknowledging that this is only possible by the incredible efforts of educators in her school:

An extraordinary school recognises that their supreme responsibility is to grow every individual child into a successful learner, a confident and creative individual and an active and informed citizen who has the self-esteem and motivation to thrive in the modern world. How are we doing this? Passion, dedication, commitment, good will, hard work, but above all else advocacy. Many of the students who attend our school are disadvantaged by generational trauma, poverty and disability. It is our commitment to our community to bring reality to the rhetoric of breaking cycles.¹⁸⁸

- 2.99** Ms Rudling highlighted the view expressed by other inquiry participants that teachers and schools are fundamentally ‘doing the best they can with what they’ve got’. Ms Rudling advised that in order for the school to meet its commitments to students with disability, and indeed all students in the school, she must strategise and be creative in allocating funds and resources:

To do this we strategically use funding and resources to address point of need in our school. This has included restructuring classes, employing additional teaching and nonteaching staff and paraprofessionals to educate and support us to work with students and their families. It requires a huge amount of creativity and there is often frustration that we cannot do more.¹⁸⁹

Increased prevalence and complexity of disabilities

- 2.100** Closely tied to the pressures faced by teachers and schools in meeting the diverse needs of their students is the reality that the prevalence and complexity of disabilities presenting in both mainstream schools and special schools is increasing. In particular, the committee received evidence of an increase in the diagnoses of learning disabilities and the prevalence of mental health and behavioural disorders. Autism Spectrum Disorder was also highlighted by inquiry participants as coming to the forefront in recent years.
- 2.101** Ms Bale, NSW Department of Education, advised that the number of students with disability presenting at schools is increasing.¹⁹⁰
- 2.102** In particular, certain trends in prevalence and complexity were discussed by inquiry participants. For example, Northcott advised of a rise in learning disabilities as opposed to physical ones.¹⁹¹
- 2.103** Mr Presland, NSW Secondary Principals Council, drew attention to the changing nature of mental health disorders and the challenging behaviours displayed by such students, stating:

There is great concern about managing the more complex, antisocial and/or challenging behaviours of students. ... Since the 2010 report, there has been an

¹⁸⁸ Evidence, Ms Sarah Rudling, Principal of Barrack Heights High, 19 May 2017, p 26.

¹⁸⁹ Evidence, Ms Rudling, 19 May 2017, pp 26-27.

¹⁹⁰ Evidence, Ms Bale, 27 March 2017, p 2.

¹⁹¹ Evidence, Ms Aby Hutchinson-West, Manager Multidisciplinary Services, Northcott, 3 April 2017, p 48.

increasing prevalence and complexity in the nature of mental health and the incidence of physical threats, assaults, verbal threats and abuse towards both staff and students.¹⁹²

- 2.104** The non-government sector also reported an increase in the prevalence of such disabilities and special needs in their schools across the state. Ms Smith, NSW Independent Education Union, advised:

Whether it is a principal in Bondi, Bourke, Broken Hill, or Ballina, we deal with them across our sector. They all tell us the same story; that is, they are dealing with increasing numbers of students with a range of special needs in the learning, social, emotional and behavioural areas.¹⁹³

- 2.105** Ms Anne Flint, Executive Member, Special Education Principals and Leaders Association, made the observation that students with less complex needs can no longer be found in special schools but are rather in the mainstream environment, stating that ‘that is terrific and it is testament to the increasing capacity of mainstream schools to meet the learning needs of these students’.¹⁹⁴ However, as noted earlier, the great diversity of student need found in mainstream classrooms is proving challenging for many teachers.

- 2.106** Ms Flint also acknowledged that the complexity of disabilities in special schools has increased over the years.¹⁹⁵ This view was shared by Ms Katrina Eyland, Principal of Havenlee School, a school for specific purposes (SSP), who explained the impact of these enrolment trends but raised concerns over having to manage the tensions between certain types of complex disabilities now found within SSPs:

Because of the success of the Every Student, Every School policy many students with disabilities are now being supported in either mainstream or support classes in mainstream schools who traditionally would have gone to an SSP. As a result SSP enrolments tend to be for students with higher more extreme support needs. At Havenlee School we are seeing more and more of two types of students: those with severe physical, intellectual and high medical support needs, that is typically a student in a wheelchair often requiring tube feeding, toileting, suctioning and the administration of medication; and those with severe intellectual disabilities combined with severe autism and trauma. These students often have high anxiety, high sensory needs and compulsive behaviours which in turn lead to unpredictable and often violent behaviour. Having these two types of high support needs students in the same school is problematic.¹⁹⁶

- 2.107** In commenting on how teachers manage the increasing prevalence and complexity of disabilities in classrooms, one teacher expressed the view: ‘Teaching becomes more classroom management than effective pedagogy’.¹⁹⁷

¹⁹² Evidence, Mr Presland, 27 March 2017, p 38.

¹⁹³ Evidence, Ms Smith, 3 April 2017, p 13.

¹⁹⁴ Evidence, Ms Flint, 27 March 2017, p 44.

¹⁹⁵ Evidence, Ms Flint, 27 March 2017, p 44.

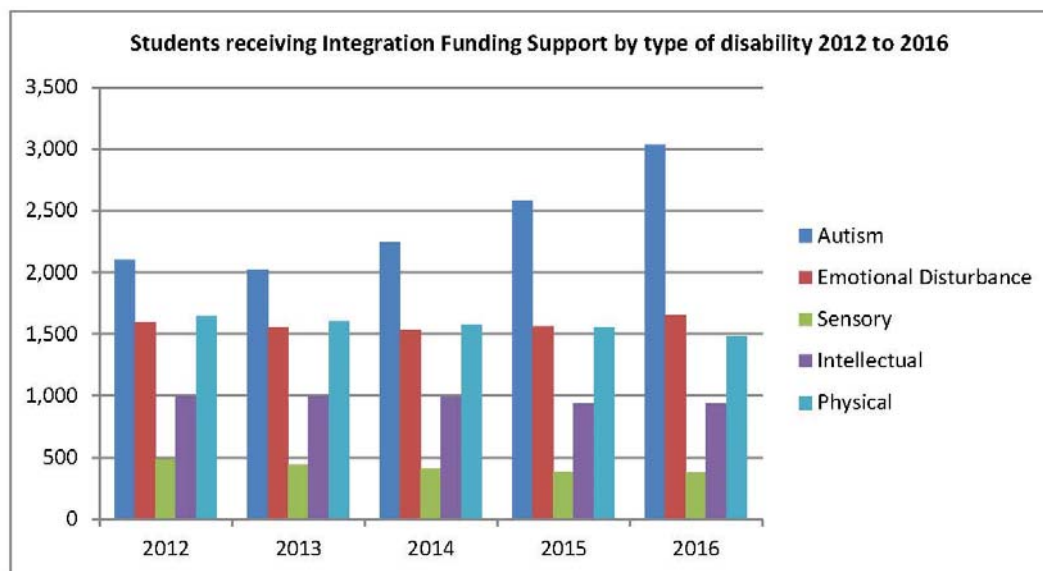
¹⁹⁶ Evidence, Ms Katrina Eyland, Principal, Havenlee School, 19 May 2017, p 26.

¹⁹⁷ Submission 323, Name suppressed, p 1.

Autism

- 2.108** According to Autism Spectrum Australia (Aspect), conservative prevalence figures suggest that there are approximately 57,000 Australian children (from 0 to 18 years of age) on the autism spectrum, of whom over 18,000 live in New South Wales.¹⁹⁸ Reflecting this prevalence, the committee received evidence about the increasing number of students diagnosed with Autism Spectrum Disorder in recent years. The NSW Government advised that additional funding has been provided to schools to support these students.¹⁹⁹ Discussions around the number of students presenting with autism suggested that both better diagnostic tools and greater prevalence of the disorder could be attributed for the increasing trend.²⁰⁰
- 2.109** The table below demonstrates the increase in funding needed to meet the challenge of the increased prevalence of students with autism.

Table 1 Number of students receiving Integration Funding Support by type of disability²⁰¹



Source: Department of Education data 2016

- 2.110** With these high prevalence rates, inquiry participants advised that there are particular educational challenges faced by students with autism that require immediate and appropriate educational support.²⁰² Ms Elizabeth Gadek, National Director, Aspect Education, Autism Spectrum Australia (Aspect) explained:

¹⁹⁸ Submission 112, Autism Spectrum Australia (Aspect), p 1.

¹⁹⁹ Submission 135, NSW Government, p 10.

²⁰⁰ For example, Evidence, Ms Elizabeth Gadek, National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 70; Evidence, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, 27 March 2017, p 17.

²⁰¹ Submission 135, NSW Government, p 10.

²⁰² For example, Submission 112, p 2; Submission 127, Name suppressed, p 5; Submission 413, Yellow Ladybugs, p 4; Submission 145, Name suppressed, p 1.

We note that students on the spectrum have challenges with impairments in social communication and social interaction, restricted and repetitive patterns of behaviour, and sensory issues. That makes being in an educational setting significantly challenging for some of these students. We know that these students struggle in the education system facing problems such as school exclusion, bullying, depression, anxiety and are often misunderstood by educators and peers in the wider community.²⁰³

- 2.111** The committee heard that this was true for many parents who participated in the inquiry.²⁰⁴ For example, one parent of a son diagnosed with Autism Spectrum Disorder shared their experiences of both government and non-government schools and how, following a number troubling and traumatic experiences, chose to withdraw their child from mainstream education and homeschool him instead. The parent explained the fallout of their son's school experience:

As Kindergarten progressed, my son found the increasing academic challenges and social demands of the classroom and playground more difficult to navigate... he would come home catatonic, and unable to complete basic self-care needs (eating, toileting, undressing) and unable to participate in any social interaction with his two brothers or either parent. At bedtime, he would engage in prolonged violent, self-injurious meltdowns before falling asleep weeping, exhausted. In the mornings, he would violently protest any attempt we made to prepare him for school: his school refusal occurred every morning, and was aggressive, self-injurious, and prolonged. It was underpinned by a growing deep self loathing at how profoundly he felt he was failing at school.

I brought this behaviour to the attention of his classroom teacher and his Principal repeatedly.... The primary reaction of the school was inaction. I was treated as the stereotypical overprotective mother, my concerns were left unaddressed, and my son was left unsupported.²⁰⁵

- 2.112** Dr Laura Issa, parent, observed that such struggles demonstrate an urgent need to address the challenges faced by students with autism so as to provide a truly inclusive educational experience. Dr Issa stated:

I am hearing from parents ...that for autism and those difficult spectrum disorders we just do not know what we are doing and we have not got it right. Perhaps for vision and physical disabilities we have had a little bit more experience and we have some guidelines but there is no guidebook. There does not seem to be a framework for integration and inclusion. Inclusion, in my view, is really about finding ways for kids to be able to participate, to actively learn in the classroom and to be able to engage in the curriculum in a way that benefits them at their level. I do not think we have found that and that is what we need.²⁰⁶

- 2.113** Ms Gadek acknowledged that while not all students on the spectrum need additional support, there are a great many that do and it is these students that require support at various stages of their school journey. She stated:

²⁰³ For example, Evidence, Ms Gadek, 27 March 2017, p 69.

²⁰⁴ For example, Submission 205, Name suppressed; Submission 418a, Name suppressed; Submission 18, Name suppressed; Submission 146, Name suppressed; Submission 15, Name suppressed.

²⁰⁵ Submission 113, Name suppressed, p 2.

²⁰⁶ Evidence, Dr Issa, 27 March 2017, p 34.

... not all people on the spectrum need extra support. There are many students coping very well without the extra support. I think what we have to be aware of is the ones that do need that extra support at various stages in their journey through school get the support that they need.²⁰⁷

Committee comment

- 2.114** The committee is deeply troubled by the stark contrast between the inclusive approach to education provision promoted in legislation and policy and the reality experienced by many participants of this inquiry, whether they be students, parents, teachers or schools.
- 2.115** We acknowledge that, while the deep-seated stigma and discrimination around disability is not unique to the education space, it has certainly manifested itself in real and concrete ways, no matter how subtle, across many aspects of schooling life for students with disabilities and special needs and their families.
- 2.116** In particular, the committee is disturbed by evidence that students with disabilities and special needs are subject to ill-treatment and abuse, and is shocked that such incidents continue to take place today. The committee condemns any behaviour that is disrespectful, harmful or dangerous to students with disabilities and special needs, as with all students, and calls for greater respect of the rights of all students to a safe and supportive school environment.
- 2.117** The committee also recognises the great inconsistency in the quality of education and support being delivered by schools. We note the passion and commitment expressed by educators to deliver positive outcomes, opportunities and experiences, and is encouraged by the various examples of best practice and inclusion during the inquiry. However, based on the evidence to this inquiry, the committee considers these examples to be exceptions rather than the norm.
- 2.118** We also acknowledge the ongoing debate about the value and need for segregated settings since the move towards inclusion in education provision over the last three decades. While the committee supports the inclusion of students in mainstream settings, we believe there is a place for special settings that can provide targeted support to students who need it. We do not believe that a policy of inclusion and the presence of segregated settings represent mutually exclusive ideals, and agree with inquiry participants who maintain that it is the quality of instruction rather than simply the setting in which it is delivered that is most important.
- 2.119** While the experiences of students with disabilities and special needs is at front and centre of this inquiry, the committee is mindful of the experiences of the many teachers who contributed to this process. We recognise that teachers must operate under many varied and challenging constraints in order to deliver quality education to their students, including funding and staffing constraints. In particular, the committee notes the views of those participants who argue that the move to mainstream inclusion has not been adequately matched by resources and support, and is concerned this may reflect certain attitudes towards students with disabilities and special needs at a systemic level.
- 2.120** The committee recognises the incredible complexities around education provision and does not intend to simplify the many factors at play. However, the committee believes there is an urgent need to align policy with practice, and finds that a deep cultural change is necessary if

²⁰⁷ Evidence, Ms Gadek, 27 March 2017, p 76.

students with disabilities and special needs are to be provided with quality, personalised, inclusive education.

Finding 1

That, while there are many striking instances of excellence, the inclusive approach to education provision promoted in legislation and policy is not the reality experienced by many students with disabilities and special needs in New South Wales schools.

Finding 2

That the committee:

- supports the cultural, legislative and policy shift from segregating students with disabilities and special needs to including them in mainstream schooling in all systems, where reasonably practical
- believes this reflects a broader social change towards the inclusion of people with disabilities
- recognises that decisions about enrolment should primarily be matters for well-informed parental choice.

Recommendation 1

That the NSW Government formalise a presumption applicable to all New South Wales schools that a child is to be educated in an inclusive mainstream setting, unless there are compelling individual reasons for other arrangements.

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- 2.121** In practice the committee believes this would include the Department of Education website reflecting mainstream classes as the first, default and preferred option for students with disabilities and special needs and for example, the enrolment form to include information about the rights of students with disability. This information would be provided to all parents at enrolment, initial meetings, at transition stages and when a disability or functional impairment is identified.

The role of the NSW Department of Education

- 2.122** In this inquiry, much of the evidence received by the committee related to the provision of education to students with disabilities and special needs in government schools. As such, the NSW Department of Education as a service provider and driver of school culture featured heavily during the course of this inquiry. In particular, inquiry participants shared their experiences of the Department and raised a number of concerns about their capacity to promote and implement inclusive education in collaboration with parents and families of students with disabilities and special needs.

- 2.123** During the inquiry, criticisms were levelled at the Department for fostering and perpetuating a culture of discrimination against students with disabilities and special needs.²⁰⁸ For example, Witness E, who has Autism Spectrum Disorder as do their children, stated that while they never considered themselves disabled, they felt ‘disabled in the system’:

People on the spectrum have given much to this world because we are intensely observant ... It has to be remembered at all times that there are gifts with this disability. I told my children when they were born that they were not disabled. I thought I am different, not disabled, but I have felt disabled in this system.²⁰⁹

- 2.124** The witness argued that the Department is ‘labelling people as disabilities’ rather than treating them as people.²¹⁰

- 2.125** Indeed, another inquiry participant expressed this through her experience as a mother of a child with Apert Syndrome, a rare condition causing bone fusion, including in the skull, fingers and toes, as well as cognitive development and speech delay. Ms Michelle McLellan told the committee how seeking educational access for her son was a challenging, drawn out, impersonal experience, with the Department making decisions based on ‘ticking boxes’ without genuine regard for her child:

The system was extremely impersonal when assessing whether my son was eligible for support. In the beginning the department coded my son’s disabilities into boxes and once again Apert Syndrome missed those boxes, so he did not get the reasonable hours that he really required. Not one person from the department to this day has come out to visually assess my son in his environment. It is horrifying to know that the future of my son’s education lies in the hands of people who have never met him. They are simply making big decisions from a number on the page.²¹¹

- 2.126** Witness E asserted that the Department is bullying students and their families with no understanding of the impact they have had on people’s lives:

They fail to understand the harm they are doing to people. We are people. I may make errors like everybody else but the department are the biggest bullies The greatest bullies are in the department and those feelings must trickle down. If we are not shown respect and our children with disabilities are not shown respect why should the children in the classroom offer respect or care or compassion or even be interested in what we have to offer.²¹²

- 2.127** According to one witness, there is significant discrepancy between what the Department promotes in policy and what it does in practice:

... the department talks the talk, but in balance fails to walk the walk. It is easy to say, ‘We value stakeholders and are committed to providing them with what they need.

²⁰⁸ For example, Submission 259, Education and Disability Advocacy, p 1; Submission 421, Mrs Vanessa Comiskey, p 1; Submission 416, Mr Jim Bond, p 3; also see Chapter 6.

²⁰⁹ *In camera* evidence, Witness E, 19 May 2017, p 3, published by resolution of the committee.

²¹⁰ *In camera* evidence, Witness E, 19 May 2017, p 3, published by resolution of the committee.

²¹¹ Evidence, Ms McLellan, 8 May 2017, p 14.

²¹² *In camera* evidence, Witness E, 19 May 2017, p 3, published by resolution of the committee.

Working towards this, we consult and include stakeholders with equity'. If the department was walking this walk, we would likely not be here today.²¹³

- 2.128** This witness asserted that 'the higher you go up in management there is indeed a concerning lack of awareness and acceptance of the systemic issues', which represents the most significant barrier to students with disability being given the support they need:

When a lack of commitment or poor, arrogant attitudes start to become reasonable and legitimate, either in perception or reality, in this consideration the changes our children need will not likely happen and in the way they desperately need them to.²¹⁴

- 2.129** Dr Donald Gillies, Member of the Board – Advocacy, Special Learning Difficulties Association of NSW, reflected a similar view, expressing concern over the basic lack of understanding that action at the leadership level is required for change. He stated:

We come out of those discussions [with Department representatives] feeling very positive that change will occur. We wait for it to occur, but nothing happens. That indicates a lack of understanding of the role of leadership in ensuring that decisions taken in those forums are acted upon. It is also an indication to me that there are areas of the department that do not understand the change process. That is very concerning.²¹⁵

- 2.130** Dr Gillies argued that this reflects a 'lack of coordinated leadership within the department' and insisted that 'transformational leadership' – rather than bureaucratic leadership – is needed in order to empower teachers on the ground to identify and act on issues, and to affect systemic change:

I believe that the department is based upon a bureaucratic approach to leadership. Leadership has changed over the years; it is now transformational leadership rather than transactional leadership. We are now in a situation where people need to be empowered to get involved in identifying issues and acting on them. This is a classic case. People in the department know there are problems related to this issue, and no-one appears to be aware of the fact that action is required. It just goes on. There are schools that are adopting processes that certainly are not evidence-based.²¹⁶

- 2.131** Other inquiry participants criticised the Department for not being transparent, open or accessible, and for being adversarial and defensive in their decisions and actions.

- 2.132** For example, parent Ms Caroline Thornton stated: 'One of the things I have seen is that transparency is needed in the Department of Education. That is clear'.²¹⁷ Mr Thornton argued that Departmental process is not clear or transparent:

I see time and again people having problems with the process.... There is no clear process in any aspect of the Department of Education for parents to follow. You can be the smartest person on the face of the earth but you do not know the process'.²¹⁸

²¹³ *In camera* evidence, Witness B, 19 May 2017, p 2, published by resolution of the committee.

²¹⁴ *In camera* evidence, Witness B, 19 May 2017, p 1, published by resolution of the committee.

²¹⁵ Evidence, Dr Donald Gillies, Member of the Board – Advocacy, Special Learning Difficulties Association of NSW, 23 June 2017, p 8.

²¹⁶ Evidence, Dr Gillies, 23 June 2017, p 8.

²¹⁷ Evidence, Ms Caroline Thornton, Parent, 19 May 2017, p 15.

- 2.133** Mrs Vanessa Comiskey, parent, agreed with this view stating that departmental policies and support for teachers are not as readily available for parents, and that there is limited access to information that may ensure a measure of accountability from teachers:

I have looked at other departmental policies ... and I feel it is more tailored to staff needs than what it is to parents needs. There are staff toolkits on the website that would be valuable for parents but parents cannot access them. How do we get that extra information? They are not being transparent in providing that information. How do we, as parents, then empower ourselves to say to the department, 'Well, you are going against your own policies here', which I have had to do a couple of times. They have argued the fact and turned it around and said, 'No, you are incorrect, because this is the way we are interpreting it'. They need to be a little more clearcut in their policies.²¹⁹

- 2.134** In discussing her experience of complaints handling in New South Wales, detailed further in Chapter 6, Ms Julie Phillips, Member, Children and Young People with Disability Australia, described the Department as being defensive in nature, prioritising the protection of their staff and legal defense. She urged for a change in culture in order to ensure students with disabilities are protected:

If you do not change the whole culture at the top of the Department of Education here... in terms of changing the priorities from defence of the Department of Education people to protection of marginalised and vulnerable children these [legislative] schemes will never really work.²²⁰

- 2.135** Dr Issa also commented on the Department being defensive within the context of risk aversion, arguing that the Department's attitude to managing risk potentially promotes learned helplessness amongst students with disability. She explained from the perspective of her son's experience:

I have always been concerned about the Department of Education's attitude towards managing risk. Sometimes their focus is on protecting themselves rather than perhaps doing what is best for a child. They are quite risk averse. With [my son] they were highly risk averse. He was not allowed to, for example, move around the playground in case he might fall or hurt himself. They were very restrictive. They were often too controlling of his movement and his ability to be independent. I worry that the approach promotes learned helplessness. They over-help because they are worried about risk.²²¹

- 2.136** Other examples of these criticisms are considered throughout the report, particularly in Chapter 6.

- 2.137** In response to the various concerns raised about the Department throughout the inquiry, Mr Scott, Secretary of the NSW Department of Education, stated that the Department runs a 'fine education system' but acknowledged that it is 'not a perfect one'.²²² He conceded that in

²¹⁸ Evidence, Ms Thornton, 19 May 2017, p 15.

²¹⁹ Evidence, Mrs Comiskey, 19 May 2017, p 15.

²²⁰ Evidence, Ms Julie Phillips, Member, Children and Young People with Disability Australia, 3 April 2017, p 56.

²²¹ Evidence, Dr Issa, 3 April 2017, p 29.

²²² Evidence, Mr Scott, 23 June 2017, p 55.

an organisation as large as the Department there will be ‘moments of human failure and systemic failure’.²²³ He explained:

Today nearly 800,000 young people are learning in the New South Wales Government schools. Ours is one of the largest education systems in the world. More than 100,000 of those young people receive personalised learning and support because of disability. In this large system we have dedicated principals, highly skilled and professional staff and some outstanding facilities. However, it is a highly demanding and complex area of education.

... We understand that for many children with disability parents already have made a remarkable personal commitment and sacrifice to create the most supportive environment possible for their children. Inevitably, as in any organisation of this size—and the department is one of the largest organisations in Australia—there will be moments of human failure and systemic failure, where individuals have failed to act responsibly and professionally, resulting in learning environments that have not been constructive and productive or, even worse, putting children in harm’s way. At times the department will not have identified risk early enough or appropriately, or will have been too defensive in the face of criticism and not engaged enough with areas of concern.²²⁴

- 2.138** However, Mr Scott reassured that ‘[o]ur commitment is to every child in our system; that every year there is learning and progress to see improvement and achievement ...’.²²⁵ He maintained that it is the imperative of each staff member to ensure that all students are ‘known, nurtured and cared for’:

... I believe overwhelmingly the staff of the department are committed to ensuring that every child and young person in our care flourishes; that they are known, nurtured and cared for; that they are learning and improving and preparing to be great, productive, and valued citizens—every one of them.²²⁶

- 2.139** Accordingly, the committee was advised that significant reform is underway in recognition of the fact that there is still room for improvement in clarifying expectations and opportunities for both parents and schools:

A new school excellence framework, school and teacher accreditation requirements plus school planning and reporting requirements provide accountability. These are major changes still in relatively early stages. Work is still needed to ensure that parents, school staff and the community fully understand the opportunities and expectations that come with them.²²⁷

Committee comment

- 2.140** The committee acknowledges the widespread concerns raised by inquiry participants about the leadership exercised by the NSW Department of Education in the delivery of education to

²²³ Evidence, Mr Scott, 23 June 2017, p 55.

²²⁴ Evidence, Mr Scott, 23 June 2017, p 55.

²²⁵ Evidence, Mr Scott, 23 June 2017, p 55.

²²⁶ Evidence, Mr Scott, 23 June 2017, p 55.

²²⁷ Evidence, Ms Bale, 27 March 2017, p 2.

students with disabilities and special needs in government schools across the state. In particular, we note the anxiety and frustration of families who feel that their children are being considered, not as people, but as disabilities.

- 2.141** The committee also acknowledges and appreciates the frank admissions of the Department's Secretary, who accepted that there are, at times, both human and systemic failures in the system. The committee is encouraged by the Department's commitment to the students in its care but urges action to accompany this commitment. We also accept that there are many instances where government schools provide an exemplary inclusive and supporting education for children with special needs. Our concern is the lack of consistency.
- 2.142** The committee believes that strong leadership is vital to affect change in culture and practice at all levels and in all aspects of the education system. The committee challenges the Department to exercise this leadership for the benefit of all students, particularly those with disabilities and special needs.

The role of parents

- 2.143** Through the many personal stories shared during this inquiry, the committee gained an insight into the complex, challenging and passionate role parents and carers play in seeking the best educational opportunities and outcomes for their children with disabilities and special needs. The committee received evidence that parents are under enormous pressure and face many challenges in raising their children. Often they feel disempowered within the education system, with many not having the capacity to effectively advocate and, if they do, being met with resistance or dismissal. The committee heard that all parents want is collaboration and communication with educators. After all, they argued, they are the experts of their children.
- 2.144** The following case study demonstrates the 'continued complexity and frustration' that is faced by parents of students with disabilities and special needs, who, in partnership with teachers, seek to have the needs of their children met.

Case study – Rosie, parent

During the inquiry, Ms Sarah Rudling, Principal of Barrack Heights Public School, shared an email from a parent of a student with disability, Rosie, about contributing to the current inquiry:

Dear Sarah,

Thanks for sending me the submission made by our school re meeting the needs of students with a disability.

Thank you for including me and asking for the involvement of parents and families. I have nothing but the highest respect for your lion-hearted drive and determination to do the best for each of our children. Unfortunately, I don't really understand how you would have me help. I feel that I may not have understood your requests correctly. The language I've encountered in my brief research has been both dense and foreign... I have information overload, and at the same time I feel both terribly ignorant and ill-equipped.

I have so little brain power available after the crushing emotional and physical demands of my daily life in a household where disability dictates everything in one respect or another, and even less courage in terms of approaching people I don't know well, with questions or requests I myself don't fully

comprehend. This is pretty much how it feels to be the parent of a child with a disability in a nutshell! I fear that I am not the person you need on side right now. This is my failing and I hate it with a passion. I would do anything and everything within my power to make a positive difference for you. For all the kids. For my dear [son]. But I am just so very limited. I am grateful to God for all the work you and your devoted team do in providing the best education and care for my kids. I am really happy with the school. It is not in my nature to complain, let alone agitate for change. I am no visionary, I can't imagine what to ask for, I just make the best of what I see before me. Sometimes I fail at that fail at that, too. I suppose as a parent I rely very heavily on your team at Barrack Heights Public School to provide an education for [my son]. We recently found out that he probably has dyslexia (on top of the autism) and I am so fearful that he may not learn to be a confident reader and that this will hold him back in life. Kids with autism often seem to have huge potential in certain areas... some may well be the innovative geniuses of tomorrow... but my [son] needs to learn to read and write, first. It kills me to think that lack of funding is a determining factor here!²²⁸

- 2.145** Mr Brett Holland, teacher and parent of children who have experienced neurodiversity, diverse learning needs, and chronic illness, discussed children ‘experiencing’ disability, referencing the fact that children and their families are on a ‘shared journey’. Mr Holland described this journey as being difficult and demanding for many parents of students with disabilities and special needs:

The experience of childhood disability in Australia is a shared experience, often over a lifetime of families providing care, support and advocacy for their most precious and vulnerable members. We know that the journey of raising a child experiencing disability can be difficult, and navigating services in education, health and other care needs makes tremendous demands on individual parents, and can strain even the strongest of family and marital bonds.²²⁹

- 2.146** Ultimately, parents undertake this journey because, as Ms Meg Clement-Couzner, Senior Systemic Advocate, Family Advocacy, stated, ‘... without a doubt... almost without exception parents want the best for their children’.²³⁰
- 2.147** However, a number of inquiry participants advised that they often feel disempowered while navigating the education system, particularly as they pursue enrolments or complaints, as outlined in later chapters. As stated by Ms Yolande Cailly, Member, Family Advocacy: ‘There definitely is a power imbalance’.²³¹
- 2.148** According to Dr Rachel Sowden, parent: ‘Time and time again you hear of parents who are just asking that their child have access to an education like other students and they are bullied, belittled and made to feel unwelcome in their requests’.²³²
- 2.149** Some inquiry participants commented on the capacity of parents to respond to such behaviours.²³³ For example, Mrs Comiskey advised that many parents have approached her

²²⁸ Evidence, Ms Rudling, 19 May 2017, p 27.

²²⁹ Evidence, Mr Brett Holland, Teacher, 8 June 2017, p 2.

²³⁰ Evidence, Ms Clement-Couzner, 3 April 2017, p 66.

²³¹ Evidence, Ms Yolande Cailly, Member, Family Advocacy, 3 April 2017, p 68.

²³² Submission 18, Dr Sowden, p 7.

²³³ For example, Evidence, Dr Heyworth, 27 March 2017, p 25.

not knowing how to vocalise their concerns and commented that without the capacity to advocate, parents would not be able to progress their issues very far:

...I think it is very complex. I get a lot of people contacting me that have that problem of not being able to vocalise their concerns to the schools. They are at an absolute desperation rate... I have heard some really horrific stories where I feel that the abuse would be at a level where it would make a normally functioning adult want to commit suicide ...But if they do not have the capacity to go to the principal and make complaints and stuff like that, it is not going to go very far.²³⁴

2.150 Similarly, Dr Sowden advised that if you are not a 'lawnmower parent' or have your own challenges, it is much harder to 'jump through hoops':

If you are not a lawnmower parent who jumps up and down and advocates for your child, if you have been told time and again that the school is doing the best it can for your child, if you perhaps were not particularly successful at school yourself or you might have a disability yourself, it makes it harder to jump through the hoops.²³⁵

2.151 Some inquiry participants, such as Mr David Roy, parent, and academic, asserted that even those with the educational capacity struggle to successfully champion their child's needs: 'We are all PhD trained individuals, and we are struggling'.²³⁶

2.152 Inquiry participants told the committee that parents sought a respectful, collaborative relationship with all stakeholders in their child's education, with open communication and consultation about how to best meet the student's needs.²³⁷ For example, Ms Suzanne Robertson, parent, stated:

It is imperative that schools work collaboratively with the child's family, therapists and early intervention providers to provide a holistic picture of the child's needs, so that the appropriate adjustments can be put in place to support the student on their learning journey.²³⁸

2.153 This view was also expressed by Ms Claudia Vera, Organiser, NSW Teachers Federation, who stated that strong collaboration is key to quality educational outcomes for students with disability:

...strong and ongoing collaboration is required to deliver the holistic, integrated and specialised services necessary to support complex needs. Collaborative relationships with parents and communities that are characterised by mutual respect and facilitate the sharing of expertise, knowledge growth and choice are vital for achievement and well-being through quality education.²³⁹

²³⁴ Evidence, Mrs Comiskey, 19 May 2017, pp 14-15.

²³⁵ Evidence, Dr Sowden, 3 April 2017, p 38.

²³⁶ Evidence, Mr Roy, 27 March 2017, p 21.

²³⁷ For example, Submission 126, Federation of Parents and Citizens Association of NSW, p 13; Evidence, Ms Becker, 3 April 2017, p 58; Submission 319, Name suppressed, p 1.

²³⁸ Evidence, Ms Suzanne Robertson, Parent, 8 May 2017, p 13.

²³⁹ Evidence, Ms Vera, 3 April 2017, p 3.

- 2.154** Ms Clement-Couzner highlighted the importance of parental involvement in educational planning, in particular, to deliver successful inclusive education: ‘Evidence suggests that parental involvement in educational planning is one of the key factors that leads to the success of inclusive education and education of students with disabilities’.²⁴⁰
- 2.155** Ms Mandy Shaw, Director Public Schools NSW, Wollongong Network, NSW Department of Education, acknowledged the need for improvement around the area of parental consultation and communication. She noted that there are some schools that have established good relationships with their families, and others that have not:

Could I just say that whole consultation with parents is right from the beginning of the year about where is their child going, what is the plan and what do you think about that? It is not done as well as it should be. I would be the first person to say that could be done a lot better. In some places it is done very well and there are good relationships built. There is trust built and clear communication about the sort of support in place for that plan for that child. In some places it is not done as well as it should be.²⁴¹

- 2.156** Some inquiry participants reflected on their role as part of this collaborative effort, with Dr Issa sharing that she would often help her son’s school solve problems. She explained:

I was always raising issues and I did not see them always addressed. Sometimes I helped them solve problems. I would say, ‘Well, how about we do it this way or that way?’ I became the problem solver. ... my primary interest was to work with the school. They have a duty of care. They are looking after my son. I have a teacher’s aide who looks after my son—I do not want to get her offside. I want to work with them and help them solve problems. That is the role that I took on. So I would find solutions... My approach was to help them find better ways of doing things rather than go and complain and be difficult...²⁴²

- 2.157** Others, however, shared experiences of the opposite where teachers and schools were not open to, if not offended by, the solutions offered by parents.²⁴³ This was true for parent Mrs Comiskey who sought expert advice to support the suggested strategies for her son:

I sat down with an autism specialist. I said, ‘This is my problem; how do I fix this?’ She gave me some really good strategies. I took that back to the school and the school just looked at me as though, ‘How dare you tell me how to do my job?’ He never implemented those strategies, even though it was not going to cost them a cent. I thought they were very simple strategies. That just was reflective of the whole experience of his schooling life. No matter what I suggested or how I tried to work with the school, they just would not change.²⁴⁴

²⁴⁰ Evidence, Ms Clement-Couzner, 3 April 2017, p 67.

²⁴¹ Evidence, Ms Mandy Shaw, Director Public Schools NSW, Wollongong Network, NSW Department of Education, 19 May 2017, p 38.

²⁴² Evidence, Dr Issa, 3 April 2017, p 29.

²⁴³ For example, Submission 136, Intellectual Disability Rights Service, p 3; Submission 127, Name suppressed, p 15; Submission 15, Name suppressed, p 2.

²⁴⁴ Evidence, Mrs Comiskey, 19 May 2017, p 13.

- 2.158** Moreover, a number of inquiry participants commented on the lack of respect for the knowledge parents have of their children. For example, Ms Clement-Couzner argued that:

Fundamentally, there needs to be an understanding that parents usually know their child best, and will understand and have examples of things that will work, for example, removing triggers for their child to facilitate the child's learning. That knowledge does not seem to be desired or respected at times.²⁴⁵

- 2.159** Similarly, Mr Roy asserted that, beyond funding and resourcing, a change in attitude to the way parents are treated is fundamental:

... But the big issue is not the funding or the resourcing. ...[I]t is an attitudinal change: the way that we approach it by speaking to parents. If there is an issue with behaviour or curriculum, discuss it with the parents, who are the experts. I would argue that Dr Laura Issa is the best expert on her family and that Dr Melanie Heyworth is the best expert on her family and that not I but my wife is the best expert on my family.²⁴⁶

- 2.160** In considering the Department's responsibility towards the children in its care and the role of parents within this dynamic, Mr Scott acknowledged the passion and concern of parents wanting what they perceive to be the best educational environment for their children:

... of course we will encounter parents—there are more than a million parents with children in New South Wales schools—some parents who are desperate for their children to be enrolled in a school and want their child to have what they perceive to be the most normal mainstream schooling experience possible. We understand their passion and their concern.²⁴⁷

- 2.161** However, Mr Scott maintained that educators need to be trusted in their professional judgment, just as other professionals, in the advice they give to parents:

... the people at that school and providing advice are expert educators and expert educators often about the precise disability that their child has, with clear evidence-based understanding about how to provide the kind of learning environment that will deliver the best educational outcome for that child.

To that degree, the department needs to be able to exercise that professional judgement as a professional just as any other professional—a medical professional or a legal professional needs to be able to exercise professional judgement in providing advice and engaging with that family.²⁴⁸

- 2.162** Nevertheless, Mr Scott recognised this 'emotionally charged' area as one of 'complexity' that has been 'profoundly disappointing' for many parents and families.²⁴⁹ In particular, he acknowledged the 'lost and lonely' journey experienced by parents seeking access to an education for their children with disabilities and special needs, and committed to providing a

²⁴⁵ Evidence, Ms Clement-Couzner, 3 April 2017, p 67.

²⁴⁶ Evidence, Mr Roy, 27 March 2017, p 29.

²⁴⁷ Evidence, Mr Scott, 23 June 2017, pp 62-63.

²⁴⁸ Evidence, Mr Scott, 23 June 2017, p 63.

²⁴⁹ Evidence, Mr Scott, 23 June 2017, p 63.

better approach to finding common ground between the desires of parents and the judgments of principals:

So this is clearly an area of complexity and it is clearly an emotionally charged area for families and profoundly disappointing at times on occasion.

...

But I would say that to feel that you are on a lost and lonely journey knocking on the doors of schools and having individual principals, probably with the best will in the world, saying, 'This is not the appropriate place for your child', must be a very frustrating and lonely experience for those parents and we need to be able to provide a better approach to certainly document that pathway and that journey, which I think is one question, but also to be able to broker a solution as best we can for that family and to be able to engage with them at an appropriate level, providing the appropriate expertise, so that we can really guide them to the best solution.²⁵⁰

Providing additional support to parents

- 2.163** Throughout the inquiry, numerous stakeholders called for additional support for parents in navigating all aspects of the education system, suggesting various roles that could undertake this support function for parents.
- 2.164** One inquiry participant recommended the establishment of a case manager role who would be responsible for assisting parents to access education and support for their children. They stated that such a person could 'assist parents with enforcing rights', outline 'educational pathways that promote achievement of full education potential', develop 'individual education plans', 'access assistive technologies', 'establish learning links', and advocate for 'equal access, funding, inclusion, and the rights of the child'.²⁵¹
- 2.165** Ms Edwina Turner, Principal, The Crescent School, advised that her school had just received a school chaplain, who is assisting parents in determining their child's needs with the rollout of the National Disability Insurance Scheme (NDIS). Ms Turner stated that the chaplain has been 'really valuable'.²⁵²
- 2.166** Ms Carolynne Merchant, Director, Public Schools NSW, Southern Tablelands Network, NSW Department of Education, spoke of a community liaison officer that had been employed by one of her schools to provide additional support, including filling out forms.²⁵³
- 2.167** Others found the value of such a support mechanism, particularly during the enrolment and complaints handling processes. The case for additional support in each of these processes is discussed in Chapters 4 and 6.

²⁵⁰ Evidence, Mr Scott, 23 June 2017, p 63.

²⁵¹ Submission 194, Name suppressed, p 3.

²⁵² Evidence, Ms Edwina Turner, Principal, The Crescent School, 19 May 2017, p 32.

²⁵³ Evidence, Ms Carolynne Merchant, Director, Public Schools NSW, Southern Tablelands Network, NSW Department of Education, 19 May 2017, p 43.

Committee comment

- 2.168** The committee acknowledges the complex challenges faced by parents in raising children with disabilities and special needs. In particular, we note that navigating the education system within the context of these challenges is difficult and at times overwhelming for parents. The committee recognises the concern and passion of parents who only want for their child to flourish and reach their fullest potential.
- 2.169** We understand that a collaborative relationship between parents and educators is vital for a positive and meaningful school experience but note that these relationships can be difficult to maintain if there is not mutual respect, openness and active communication.
- 2.170** The committee considers the Department's commitment to its relationship with parents positive and encouraging, and its approach warranted. Educators are experts in educating. However, the committee also acknowledges that parents, above all else, know their child best. The committee urges that both parents and educators break the 'us versus them' mentality, whether it be real or perceived, to ensure that all parties work towards providing students with disabilities and special needs the quality education they are entitled to and deserve.

Moving forward

- 2.171** While it is acknowledged that there is much room for improvement in many aspects of education provision for students with disabilities and special needs, to be explored throughout the rest of the report, the committee received evidence of a constructive, positive way forward.
- 2.172** For example, Dr Sally Robinson, Senior Research Fellow at the Centre for Children and Young People, Southern Cross University, emphasised a need to move away from classifying students with disabilities and those without in recognition of all students having different learning needs of varying degrees at different stages of their schooling life, who at all times must feel they are in a safe, supportive educational environment:

I think the problem with classifying kids with special needs and kids without is there is quite a significant group of children who have additional learning needs who are not recognised by the system but would benefit from extra attention ...

The other thing is that kids change, grow and develop all the time, and people go in and out of all kinds of ways of being, particularly if you think about people with mental health conditions—what is a strength in you one day can be a severe difficulty in another week. I know that you need to categorise in order to fund people's supports adequately, but we also need a system that allocates or thinks about creating safe school communities in a different way. I think they are different purposes.²⁵⁴

- 2.173** She added that whole school cultures need to be built to foster this attitude, with strong leadership as the foundation, pointing to positive examples of inclusive education where the value of all students are acknowledged within the school community:

²⁵⁴ Evidence, Dr Robinson, 8 June 2017, p 24.

I think it means building whole-school cultures. It means really good leadership, strong leadership. It is a long-term endeavour. In the early school years, there is some really good work happening about building inclusive communities ... They are not difference-blind, so to speak, but they have friends with disability and without disability. They are much more inclusive in their communities. How do we bring that forward into where the problem is much more entrenched? As kids have the benefit of inclusive education, we need to bring it forward ...

Those whole-school strategies need to focus on the kids without disability. Kids with disability know what they want—they just want to be kids—so helping the other kids to enable that means that we are not relying on teachers to police interactions so much because other kids...²⁵⁵

- 2.174** In light of this, a number of inquiry participants highlighted the value of personalised learning as key to meeting individual student need, as examined further in Chapter 4. For example, Ms Barbara Leiton, Member, NSW Independent Education Union, stated that, while it is a time consuming process, individual education plans are worthwhile if done effectively:

[IEP] is a very time-consuming process but it does mean that everybody, including the parents, have a say in goals for the child and what adjustments are going to be put in place in order to achieve it.

...

If it is done effectively, yes [it is worth it]. If it is a piece of paper that just gets filed away, obviously no. If it is used to make a plan that you are actually going to put in place these specific strategies to achieve a particular goal for a child, yes it is.²⁵⁶

- 2.175** As further discussed in Chapter 5, inquiry participants also called for a greater emphasis on evidence-based practice to guide the educational instruction of students with disabilities and special needs. For example, Dr Mark Carter, Associate Professor, Department of Educational Studies, Macquarie University, argued for a ‘commitment at all levels of to evidence-based practice’, that is, practice grounded in ‘rigorous empirical research that has been peer reviewed and is typically published in scientific-based journals’.²⁵⁷

- 2.176** Collaboration and consultation, with parents as discussed previously, but also with other stakeholders, was also a theme in this inquiry. Some, such as Dr Donald Gillies, Member of the Board – Advocacy, Special Learning Difficulties Association of NSW, argued that consultation is important for broader policy development around teaching to effectively address concerns at the coalface. Speaking of the positive consultation during the development of the Every Student, Every School policy, Dr Gillies stated:

...I believe that this consultancy process needs to continue. A lot of these problems about misuse of teaching methods and so on could be resolved if an organised group of people with knowledge sit down with departmental representatives and thrash out

²⁵⁵ Evidence, Dr Robinson, 8 June 2017, p 24.

²⁵⁶ Evidence, Ms Barbara Leiton, Member, NSW Independent Education Union, 3 April 2017, p 17.

²⁵⁷ Evidence, Dr Mark Carter, Associate Professor, Department of Educational Studies, Macquarie University, 3 April 2017, p 20.

the problems. This will overcome the leadership vacuum that exists within the department.²⁵⁸

- 2.177** Ms Robyn Christofides teacher, also encouraged interagency collaboration, asserting that a joint approach to meeting the needs of students with disability can have profound long term impacts:

If specialist education services are part of an approach where schools, Health, Juvenile Justice, Family and Community Services and non-government organisations can work productively together, we can achieve the best possible outcome for these vulnerable young people. We can make a real difference in breaking the cycle of social disadvantage and disability.²⁵⁹

- 2.178** This view was also reflected by the NSW Ombudsman, who drew attention to a ‘growing recognition that a ‘stronger “systems” model is needed to deliver the coordinated, multi-agency response which is often required’ to support students with disabilities and special needs.²⁶⁰

- 2.179** For Mr Andrew Johnson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, important and valuable policies in the education space exist, however, ‘it is about implementation’ of these policies:

Often when you are looking at culture change and spending a long time of my life working with children and young people, often the policy settings are there. Often there are very good policies that exist; it is about implementation. I think it is about eternal vigilance with children and young people more generally and specifically with children with disability.²⁶¹

- 2.180** According to a number of inquiry participants, implementation of policy is intrinsically linked with resourcing and thus the resourcing of reform is critical for moving forward, as outlined further in Chapter 3. As Ms Robyn Christofides stated: ‘If we can access these resources, we can deliver life-changing results’.²⁶²

- 2.181** For example, Ms Stephanie Gotlib, Chief Executive Officer of Children and Young People with Disability, asserted that long-term resourcing and support of strategic educational reform is both urgent and necessary:

...strategic reform that is adequately resourced to effect better change for students with disability is urgently needed. This must involve a focus both on a systemic reform and individual adjustments and include specific actions in relation to school culture, adequate funding, access to expertise, teacher education and the law. Direct experience of students with disability clearly demonstrates that the reform cannot be restricted to short-term initiatives. CYDA recommends that a plan for educational

²⁵⁸ Evidence, Dr Gillies, 23 June 2017, p 10.

²⁵⁹ Evidence, Ms Robyn Christofides, teacher, 19 May 2017, p 2.

²⁶⁰ NSW Ombudsman, *Inquiry into behavior management*, August 2017, p xi.

²⁶¹ Evidence, Mr Johnson, 23 June 2017, p 14.

²⁶² Evidence, Ms Christofides, 19 May 2017, p 2.

reform for students with disability is developed which clearly articulates, drives and measures the urgent and critical reform needed.²⁶³

- 2.182** Indeed, for a number of inquiry participants, the long term value and influence of meaningful, quality education of children with disabilities and special needs from the very start cannot be understated. Ms Allison Gentle, teacher, used the example of literacy to illustrate the power of this point:

I started off working in adult literacy, which really gave me a big passion for working with the younger students because it is so hard to address literacy once they are older. I worked in Corrective Services and saw the worst consequences of illiteracy. Kids went off the rails because they could not get a driver licence and because they were illiterate. Then they came to the attention of police and just got into a snowballing situation and ended up in a maximum security jail. You could see the role illiteracy had played in that and you just wanted to get back down to the source of the river and stop these problems from occurring. I have always carried that picture with me in my mind of the consequences and how long we have to try to get this right before those consequences start to snowball towards disaster for lives.²⁶⁴

- 2.183** With all of this, stakeholders maintained that the way forward must ultimately be coloured by a culture of genuine inclusion and that, according to Mr Johnson this culture must be promoted beyond the education space. He stated that this has been the call from children and young people all along:

It is important to acknowledge that the barriers experienced by children and young people with disability are not limited to school settings. To achieve a society in which all children and young people with disability are truly included, respected and free from violence we must promote broader cultural change both within and outside our schools. This is exactly what children and young people have been saying to us...²⁶⁵

- 2.184** During the inquiry, Ms Sabrina Wiley, a teacher at Karonga School, a school for specific purposes, reflected on the challenging questions that needed to be asked in moving forward and ensuring that every student, including students with disability, received not the same education but the education that they need:

... perhaps as a country, perhaps as a culture, we need to examine our fundamental paradigms around education for children with a disability. Maybe it is time, because it begs the question: Do we really believe that our most vulnerable and marginalised student population, the disabled child, deserves the right to quality education? Do we really believe that? ...If we believed that, we would agree that fair does not mean giving every child the same thing. It means giving every child what they need.²⁶⁶

²⁶³ Evidence, Ms Gotlib, 3 April 2017, p 51.

²⁶⁴ Evidence, Ms Allison Gentle, Teacher, 23 June 2017, p 34.

²⁶⁵ Evidence, Mr Johnson, 23 June 2017, p 13.

²⁶⁶ Evidence, Ms Sabrina Wiley, Teacher, Karonga School, 23 June 2017, p 43.

Committee comment

- 2.185** The committee is concerned that many students with a disability are not receiving the quality education to which they are entitled, and strongly supports a constructive, meaningful and collaborative reform program to rectify poor practices, with regular reporting.
- 2.186** One of the striking matters that came through during the inquiry is that diversity is not a binary division between ‘children with special needs’ and a ‘normal’ student population. Every class in every school contains children with different skills, learning methods, needs and abilities.
- 2.187** An individualised learning approach, focusing on the needs and circumstances of each individual child, benefits not just children with identified ‘special needs’ but every child in a classroom.
- 2.188** Viewed in this way every child has ‘special needs’ and every child benefits from a system of education that treats them as being part of a diverse group of people who all need individualised approaches to learning and teaching.
- 2.189** This is a huge challenge to any classroom teacher and it is a huge challenge to the education system and our teaching universities. However it is the end we must be striving for not just to suit the needs of an identified cohort of children with ‘special needs’ but to bring out the best in every student in every New South Wales classroom.

Recommendation 2

That, each year, the Minister for Education make a Ministerial Statement in Parliament which reports on the educational progress of students with a disability in New South Wales.

Chapter 3 Funding

Schools in New South Wales receive additional funding for students with disabilities and special needs through a variety of state and Commonwealth policies, programs, and initiatives. The methods which determine funding allocations and arrangements are detailed and complex.

This chapter outlines the broad funding arrangements for students with disabilities and special needs in government and non-government schools, and focuses on the key concerns raised throughout the inquiry which included funding uncertainty and inequity, a lack of accountability and transparency, and the continued inadequacy of funding available to schools to support the needs of students with disability. In particular, this chapter examines the nature and impact of funding changes introduced following the 2011 Commonwealth Review of Funding for Schooling (the Gonski Review), and by the NSW Government Every Student, Every School, and Local Schools, Local Decisions initiatives.

Commonwealth funding framework

3.1 The *Australian Education Act 2013* introduced a needs-based funding model for all government and non-government schools. This significant change to school funding implemented the major recommendation of the 2011 Review of Funding for Schooling, commonly referred to as the Gonski Review, which found a school funding model was required ‘that adequately reflects the different needs of students to enable resources to be directed to where they are needed most’.²⁶⁷

3.2 Under the new funding model the Commonwealth and NSW Governments committed to substantially increase funding for schools. The Commonwealth would continue to provide minority funding to government schools and majority funding to non-government schools, noting that the majority of funding for NSW Government schools is provided by the NSW Government.²⁶⁸

A needs-based funding model

3.3 The NSW Government, non-government education providers, and a range of stakeholders indicated their strong support for a needs-based funding framework, as this approach took into consideration the increased cost of the provision of education to students with disabilities and special needs and provides funding in a more equitable way. For example:

The NSW Government strongly supports this needs based approach to school funding ...²⁶⁹

...the Gonski needs-based funding model paves the way for equitable access to inclusive, quality public education for all students...²⁷⁰

²⁶⁷ Australian Government Department of Education, Employment and Workplace Relations, *Review of Funding for Schooling: Final Report*, December 2011, p xxix.

²⁶⁸ See Submission 135, NSW Government, pp 17 and 28; Australian Government Department of Education and Training, *Fact Sheet Commonwealth and state responsibilities for school funding*, p 1, <<https://www.education.gov.au/funding-schools>>.

²⁶⁹ Submission 135, NSW Government, p 28.

In principle, a model of funding which provides loadings to address disadvantage supports the education of students with disabilities.²⁷¹

...there is clear educational agreement on a way forward. It is called Gonski.²⁷²

3.4 While the needs-based policy framework and funding arrangements introduced by the *Australian Education Act 2013* are referred to as ‘Gonski’, in practice, the ‘Gonski’ funding arrangements consist of a range of components, complex methodologies, interim funding supports and short and long term transition arrangements.²⁷³

3.5 Short, general explanations of the key components relevant to this inquiry are provided below.

National Plan for School Improvement (NPSI):

- The National Plan for School Improvement (NPSI) policy framework implemented the needs-based funding model for all school students in both government and non-government schools.
- States and territories express a commitment to the NPSI and define funding arrangements with the Commonwealth through formal National Education Reform Agreements (NERA).
- Non-government schools access Commonwealth funding through individual memorandums of understanding (not NERA) that define their commitment to and implementation plans for the NPSI.²⁷⁴

Schooling Resource Standard (SRS):

- The Schooling Resource Standard (SRS) methodology is used to determine the amount of funding available to each school. The SRS comprises a base per-student funding amount and a number of equity loadings, including a loading for students with disability. The amount of equity loading a school receives is based on information gathered during NAPLAN, with adjustments made for non-government schools based on a socioeconomic status score.²⁷⁵

3.6 The NSW Teachers Federation highlighted the importance of the Gonski funding model and the SRS to ensure a parity of funding across schools and for students with disability, stating that:

Over a six-year transition period the Gonski funding model is designed to lift all Australian schools to a national school resource standard and in addition provide increased targeted funding for students with greater educational need. This is why

²⁷⁰ Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 5.

²⁷¹ Submission 112, Autism Spectrum Australia (Aspect), p-3.

²⁷² Evidence, Mr Jack Galvin Waight, Teacher, 8 May 2017, p 2.

²⁷³ Australian Parliamentary Library, *Background Note: Funding the National Plan for School Improvement: an explanation*, 26 June 2013.

²⁷⁴ Australian Parliamentary Library, *Background Note: Funding the National Plan for School Improvement: an explanation*, 26 June 2013.

²⁷⁵ Australian Parliamentary Library, *Background Note: Funding the National Plan for School Improvement: an explanation*, 26 June 2013.

Gonski is so widely supported by an overwhelming majority of people across the nation. People see it as fair and just, and crucial for our children's future.²⁷⁶

- 3.7** The NSW Government stated the intergovernmental agreement with the Commonwealth ‘provided \$5 billion of additional Commonwealth and State investment to NSW schools between 2014 and 2019.’²⁷⁷
- 3.8** Views on the impact of the Gonski model on the amount of Commonwealth funding available to non-government schools, differ between Catholic and independent schools. The Catholic Education Commission NSW (CECNSW) advised that within the Catholic sector funding to support students with disability had ‘dramatically increased’ since the 2010 Upper House inquiry into the provision of education to students with a disability and special needs (2010 Upper House inquiry) under the new model.²⁷⁸
- 3.9** Conversely, the Association of Independent Schools of NSW (AISNSW) advised the experience of independent schools in New South Wales was varied. Under the SRS funding arrangements, 103 of 478 independent schools received no equity loading²⁷⁹ as schools who were ‘calculated to be above’ the SRS benchmark under the new funding model only received indexation funding increases, which resulted in ‘trying to operate the ... educational model that is needed by students with less money in real terms.’²⁸⁰
- 3.10** In 2015, despite formal NERA and memorandums of understanding, the Commonwealth Government announced that it would not finalise or fund the final two years of Gonski in 2018 and 2019, the period in which schools were expecting to receive the ‘bulk of the additional funding’ including the loading for students with disability.²⁸¹
- 3.11** In response to this announcement the NSW Government expressed their continued commitment to the Gonski funding model and their contribution under the New South Wales NERA.²⁸² The NSW Teachers Federation, praised the ongoing bipartisan support for the Gonski reforms noting ‘that at least in New South Wales we have put this issue above party politics’.²⁸³

²⁷⁶ Evidence, Mr Maurie Mulheron, President, NSW Teachers Federation, 3 April 2017, p 2.

²⁷⁷ Submission 135, NSW Government, p 28.

²⁷⁸ Submission 133, Catholic Education Commission NSW, p 20.

²⁷⁹ Evidence, Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW, 27 March 2017, p 57.

²⁸⁰ Evidence, Ms Elizabeth Gadek, National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 69.

²⁸¹ Education and Employment References Committee, The Senate, *Access to real learning: the impact of policy, funding and culture on students with disability* (2016), p 48; Submission 112, Autism Spectrum Australia (Aspect), p 2..

²⁸² Media Release, the Hon Adrian Piccoli MP, Minister for Education, ‘Federal Government must not abandon NSW schools’, 14 May 2014, <http://www.dec.nsw.gov.au/about-us/news-at-det/media-releases1/federal-government-must-not-abandon-nsw-schools1>

²⁸³ Evidence, Mr Mulheron, 3 April 2017, p 2.

Gonski 2.0

- 3.12** In June 2017, the Commonwealth Government made changes to the *Australian Education Act 2013*, referred to as Gonski 2.0. The changes sought to correct ‘inconsistent arrangements’ caused by individually negotiated NERA and ‘ensure that students with the same need in the same sector attract the same level of Commonwealth support’.²⁸⁴
- 3.13** In particular, changes were to ensure, a ‘consistent Commonwealth share of the SRS’, that all schools transitioned ‘to their relevant share of the SRS by 2027’, and established new arrangements for the calculation of the students with disability loading. This enables ‘differentiated loadings to better reflect the needs of students in the top three levels of adjustment (supplementary, substantial or extensive) under the Nationally Consistent Collection of Data on School Students with Disability’.²⁸⁵
- 3.14** Mr Mark Scott, Secretary, NSW Department of Education, advised that the impact of these changes was unclear and would be ascertained and conveyed to schools during the final school term in 2017, stating:
- We have still got to work out precisely how it flows and what conditions apply. I can say that as we look to work out the money we are going to allocate into schools for 2018, and the money we are going to wrap around schools in support services, we are very conscious of the needs for students with a disability. We are very conscious of some of the concerns that exist around how the current formula is working. As we calibrate what funding is available and how it is distributed that is in our thoughts.
- Part of the detail we are still trying to work through is precisely where disability provisions were in the Act that went through.²⁸⁶
- 3.15** Speaking generally, Mr Scott, indicated that schools could expect more Commonwealth funding in 2018, but not as much as originally agreed in the 2014 NERA, and reaffirmed the NSW Government’s commitment to their share of the Gonski funding, stating that ‘the State Government remains committed to fully funding the six years of Gonski which was the State contribution to the deal’, while foreshadowing further discussions regarding Commonwealth funding for students with disability.²⁸⁷
- 3.16** A number of inquiry participants raised concerns about the lack of funding arrangements for what should have been the final two years of Gonski and the impact changes to funding arrangements through Gonski 2.0 will have on the ability of schools to deliver equitable quality education and meet the needs of students with disability.²⁸⁸ These concerns are addressed later in the chapter.

²⁸⁴ Parliament of Australia, Australian Education Amendment Bill 2017, Explanatory Memorandum, p 1.

²⁸⁵ Parliament of Australia, Australian Education Amendment Bill 2017, Explanatory Memorandum, pp 1-2.

²⁸⁶ Evidence, Mr Mark Scott, Secretary, NSW Department of Education, 23 June 2017, p 78.

²⁸⁷ Evidence, Mr Scott, 23 June 2017, p 77.

²⁸⁸ For example, Evidence, Mr Mulheron, 3 April 2017, p 5; Evidence, Ms Claudia Vera, Organiser, NSW Teachers Federation, 3 April 2017, p 2; Submission 300, Name suppressed, p 1; Submission 349, Name suppressed, p 1; Submission 385, Name suppressed, p 2.

- 3.17 Non-government schools provided evidence before the Gonski 2.0 changes therefore, the committee did not receive evidence on how the changes will impact on that sector.

State funding framework

- 3.18 Under the provisions of the *NSW Education Act 1990* the NSW Government provides majority funding to government schools and minority funding to non-government schools.²⁸⁹ However, the two sectors do not operate under the same funding arrangements, with a different set of components and formula used for each sector.
- 3.19 This section examines the state funding arrangements introduced under the Every Student, Every School initiative for government schools, as well as other funds provided by the NSW Government to both government and non-government schools to support the needs of students with disability.

Government schools

- 3.20 In 2012, the NSW Department of Education implemented the Every Student, Every School (ESES) initiative, with interim Gonski funding. ESES is ‘a framework for learning and support in all NSW Government schools to strengthen support for students with disability and their teachers’.²⁹⁰
- 3.21 Under ESES, schools receive funding to support the additional learning needs of students with disability through a flexible Resource Allocation Model (RAM).²⁹¹
- 3.22 The ESES/RAM model provides NSW Government schools with a base allocation and an equity loading to meet the needs of students with disabilities and special needs. The RAM also provides schools with additional targeted funding for eligible individual students under the Integration Funding Support Program.²⁹²
- 3.23 In addition, the Local Schools, Local Decisions initiative gives principals the authority to expend funds received through the RAM to best meet the needs of their students.²⁹³

Equity loading

- 3.24 The majority of students with disabilities and special needs are enrolled in regular classes in mainstream government schools. Under the RAM, support for most students with disability and special needs in mainstream schools is provided by the low level adjustment for disability

²⁸⁹ Submission 135, NSW Government, pp 1 and 17.

²⁹⁰ Submission 135, NSW Government, p 29.

²⁹¹ Submission 135, NSW Government, p 18.

²⁹² Submission 135, NSW Government, pp 6-7.

²⁹³ Submission 135, NSW Government, p 30.

equity loading. This is calculated using the three most recent years of NAPLAN data to determine a school's Student Learning Needs Index (SLNI).²⁹⁴

- 3.25** The NSW Government advised the loading provides funding for School Learning and Support Teams, comprising a specialist learning and support teacher allocation and flexible funding, which enables mainstream schools to 'meet the additional learning and support needs of students' regardless of formal diagnosis or assessment. This established a model of support where learning support teachers worked in schools to directly support teachers and students, and gave principals the flexibility to share, pool and combine the funding allocation in a way to best meet 'local needs and priorities'.²⁹⁵
- 3.26** In 2016, 'more than \$246 million was allocated to schools to support the additional learning needs of students', representing a 31 per cent increase in funding since 2012.²⁹⁶

Integration Funding Support Program

- 3.27** Additional targeted funding for eligible individual students with a diagnosed disability and moderate to high-level needs who cannot be supported 'through the full range of school and local resources', is available to schools under the Integration Funding Support Program.²⁹⁷
- 3.28** The amount of targeted funding provided to enable schools to meet the needs of individual students varies based on the individual student's 'disability and assessed level of need' and may be used by schools to directly fund teacher or school learning support officer salaries or 'in combination with other funds in the school budget to support learning outcomes for the student'.²⁹⁸
- 3.29** Since 2012, there has been a 12 per cent increase in funding approved under the Integration Funding Support Program, with over \$112 million of targeted individual student funding provided to schools in 2016 to assist more than 7,500 students.²⁹⁹
- 3.30** Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, advised that the targeted funding support available to schools was 'uncapped', increasing according to need and in response to demand.³⁰⁰

²⁹⁴ Submission 135, NSW Government, p 7; There are four equity loading categories: students from low socioeconomic backgrounds, students from Aboriginal backgrounds, students learning English as an additional language and students who have low level adjustment needs for disability.

²⁹⁵ Submission 135, NSW Government, p 8.

²⁹⁶ Submission 135, NSW Government, p 8.

²⁹⁷ Submission 135, NSW Government, p 10.

²⁹⁸ Submission 135, NSW Government, p 10.

²⁹⁹ Submission 135, NSW Government, p 10.

³⁰⁰ Evidence, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, 27 March 2017, p17.

Non-government schools

- 3.31** As noted earlier, the Commonwealth Government provides the majority of funding to non-government schools in New South Wales and the NSW Government provides minority funding.
- 3.32** The amount of state funding provided to support all students in non-government schools has increased since the 2010 Upper House inquiry, from \$833.5 million in the 2009/10 NSW State Budget to \$1.2 billion in the 2016/17 budget.³⁰¹
- 3.33** State funding for non-government schools is determined using a 12 category needs-based system of per-capita funding 'based on an average 25 per cent of the equivalent cost to educate a student in a government school', 'where students with disability are funded at the highest category regardless of the school they attend.'³⁰²
- 3.34** While the model remains unchanged since 2010, in their submission to the inquiry the NSW Government noted that '[t]he combination of per capita funding and additional funding under NERA means that NSW State funding to non-government schools will, over time, move in line with the NERA model'.³⁰³
- 3.35** Additional support and funding for students with disability is also provided through the New South Wales Supervisor Subsidy Grant for registered non-government special schools, the Assisted School Travel Program, and a range of sustained and ongoing initiatives and plans.³⁰⁴

Key concerns regarding funding

- 3.36** In addition to issues about Gonski 2.0, a range of concerns regarding funding were raised by inquiry participants. This section discusses these key issues including the continued inadequacy of funding to meet the needs of students with disabilities and special needs, the impact of the SRS and RAM methodologies, how disability criteria restricts funding, and the National Disability Insurance Scheme (NDIS) and education interface.

Historical underfunding and continued inequity and inadequacy

- 3.37** The key funding concern raised by stakeholders was the continued inequity and inadequacy of funding after 'decades of underfunding in the area of students with disability',³⁰⁵ which 'has seen the continuation and exacerbation of their inequitable access to education.'³⁰⁶

³⁰¹ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p 28; Submission 135, NSW Government, p 17.

³⁰² General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p 28; Submission 135, NSW Government, p 17.

³⁰³ Submission 135, NSW Government, p 17.

³⁰⁴ Submission 135, NSW Government, p 17; Submission 23, Association of Independent Schools of New South Wales, pp 6-7 and 14-15.

³⁰⁵ Evidence, Ms Vera, 3 April 2017, p 4.

³⁰⁶ Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 12.

- 3.38** The NSW Teachers Federation argued that ‘dismal progress’ had been made since the 2010 inquiry. Ms Claudia Vera, Organiser, NSW Teachers Federation, expressed the view that this is ‘an untenable situation impacting on cohort after cohort of students with disability, their families, teachers and peers’. Ms Vera stated:

The failure to progress toward equitable education for every student is harming the current experiences and future life outcomes of people with disability, with evidence pointing to widening gaps in social, employment and health outcomes.³⁰⁷

- 3.39** The ‘full implementation of the Gonski model’ was one of the primary concerns for stakeholders across all sectors who argued this was desperately needed to meet needs of students with disability.³⁰⁸ Mr Gary Zadkovich, Deputy President, NSW Teachers Federation informed the committee of the importance of the needs-based funding model to redress historical underfunding and the impact this has had on the provision of education to students with disability:

We have been battling for decades to have students with disability allocated their due right to the funding necessary, from all levels of government, to meet their educational need. It has been a long and arduous battle, quite frankly, for parents, carers, teachers, principals and our colleagues who work within the department. That is the history and that goes back to our opening statement on Gonski. Finally, after decades and indeed, we would say in 40 years at least, we have a needs-based funding model there to be implemented which will finally, if fully implemented, give the department the long overdue capacity to move away from those sorts of containment strategies and have the resources available to support schools in meeting those children's needs.³⁰⁹

- 3.40** Mr Jack Galvin Waight, teacher, highlighted to the committee that the Gonski funding was not a six year program but an agreement to lift schools to a minimum resource standard:

I think there is a misconception with Gonski that it is a six-year program. It is six years to get every school up to a minimum resource. We are currently only in the fourth year of that funding. ... If the funding does not continue, as outlined in the original legislation, public schools are only at 88 per cent of that minimum resource so there is a 12 per cent gap just to get them that minimum resource, which is absolutely crucial.³¹⁰

- 3.41** Concerns over the Commonwealth Government’s delay and changes to the final two years of Gonski funding were raised by many stakeholders in their submissions to the inquiry, including the NSW Government who indicated their ongoing commitment to the state contribution of the Gonski agreement, and questioned the ‘highly unusual’ withdrawal of funding part way through the agreement.³¹¹

³⁰⁷ Evidence, Ms Vera, 3 April 2017, p 2.

³⁰⁸ Submission 166, NSW Independent Education Union, p 1. See also, Submission 114, Name suppressed, p 1; Submission 351, Name suppressed, p 5; Submission 392, Guildford Public School, p 4.

³⁰⁹ Evidence, Mr Gary Zadkovich, Deputy President, NSW Teachers Federation, 3 April 2017, p 7.

³¹⁰ Evidence, Mr Waight, 8 May 2017, p 11.

³¹¹ Evidence, Mr Scott, 23 June 2017, p 78; Submission 135, NSW Government, p 28; Submission 57, Name suppressed, p. 2.

- 3.42** Indeed, intense criticism was voiced by some stakeholders who argued that Commonwealth ‘inaction ... amounts to wilful negligence that is discriminatory, regressive, life-impacting and financially irresponsible.’³¹² The NSW Teachers Federation questioned the ability of government and schools to meet their legal obligations to students with disability without the Gonski funding:

This action shows that the federal government seeks to abrogate its responsibility to deliver equitable quality education to students with disability. There have been no recurrent needs-based resources delivered to meet their responsibilities under their own National Disability Strategy 2010-2020 or to adhere to legal obligations under the Disability Discrimination Act 1992.³¹³

- 3.43** This view regarding the inadequacy of funding to enable schools to meet their legal obligations was supported by evidence received from the non-government sector, with the NSW Independent Education Union stating:

The consistent and strong feedback from IEU members (principals, teachers and support staff) is that the resources and funding arrangements for students with disabilities in non-government schools are not adequate and that schools can therefore be vulnerable to being in breach of legislation, as well as their own commitment to high professional standards.³¹⁴

- 3.44** Concerns were also raised, particularly by the non-government sector, that funding would continue to be inadequate due to inequity within the methodology used by both Commonwealth and state funding models, and this would continue to limit the capacity of non-government schools to provide educational services to students with disability.

- 3.45** The Gonski School Resource Standard (SRS) methodology was of particular concern to independent schools who had been assessed as being ‘over funded’ and the impact transition arrangements would have on their ability to provide education to students with disability.³¹⁵ Autism Spectrum Australia, who operates eight schools and satellite classes in mainstream settings in all sectors for students on the autism spectrum, advised that the impact of the SRS methodology for their schools:

...as Aspect school are 'above the SRS', none of the loadings applies. Aspect school receive only 3% indexation annually, which does not reflect the annual increased cost of running a school. Over the last decade, the school specific index average annual increase was over 5 per cent for both primary and secondary schools. (Independent Schools Council of Australia, 2017). Aspect schools are therefore trying to operate the same autism-specific intensive educational model that is needed by their students with less money in real terms.³¹⁶

³¹² Evidence, Ms Vera, 3 April 2017, p 2.

³¹³ Answers to questions on notice, NSW Teachers Federation, 8 May 2017, p 10. See also, Submission 57, Name suppressed, p 2.

³¹⁴ Submission 166, NSW Independent Education Union, p 4; Submission 23, Association of Independent Schools of New South Wales, p 5.

³¹⁵ Evidence, Ms Gadek, 27 March 2017, p 75.

³¹⁶ Submission 112, Autism Spectrum Australia (Aspect), p3.

- 3.46** With regard to the state funding model for non-government schools the AISNSW stated that in 2016 some schools ‘only receive an additional \$454 for each primary student or \$451 for each secondary student’, regardless of the level of adjustment required to meet student need, making it a ‘very small contribution to the cost of educating a student with a disability with low support needs’, and does not provide for ‘students with high support needs’.³¹⁷
- 3.47** Similarly, the CECNSW was critical of the restriction of the NSW Supervisor Subsidy Grant to certain students with autism or intellectual disability ‘enrolled in a recognised special school’, arguing ‘[t]his grant should be applied to all students, regardless of their school of attendance, who require substantial and extensive adjustments as identified through the NCCD [Nationally Consistent Collection of Data on School Students with Disability] process’.³¹⁸
- 3.48** In 2010, the Upper House inquiry into the provision of education to students with a disability or special needs recommended that the NSW Government ‘substantially increase funding for students with disabilities and special needs’ stating that there was a ‘pressing need to increase funding’ for these students.³¹⁹
- 3.49** Despite increases in funding since 2010, a wide range of stakeholders agreed there was a continued shortfall in funding, with the AISNSW stating that their views on the inadequacy of funding expressed in 2010 and the ‘substantial, sustained and committed effort’ required by governments, remained relevant in 2017.³²⁰ The NSW Teachers Federation similarly argued that funding was the key issue to implementing change:

We have had a department and schools without the capacity to implement the kinds of recommendations that were made by the parliamentary inquiry in 2010. So if you look at the checklist about what has been achieved and what has not—it is in the table—you will find, in summary, a disappointing outcome overall. Hence, our strong advocacy for implementing the Gonski needs-based funding model. If that is fully implemented we will see our department and our schools provided with that capacity.³²¹

Committee comment

- 3.50** The committee acknowledges the significant changes to school funding which have occurred under the widely supported Gonski funding model and the ongoing commitment of the NSW Government to fully funding their share of the NERA, but notes that to date students with disabilities and special needs have not benefited from clear or equitable recurrent funding.

³¹⁷ Submission 23, Association of Independent Schools of New South Wales, p 6.

³¹⁸ Submission 133, Catholic Education Commission NSW, p 11.

³¹⁹ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs* (2010), p xv.

³²⁰ Submission 23, Association of Independent Schools of New South Wales, p 18. See also, Submission 154, Uniting, p 5; Submission 166, NSW Independent Education Union p 5; Submission 216, Penshurst Public School, p 2; Submission 345, Bomaderry High School, p 2; Submission 382, Name suppressed, p 1.

³²¹ Evidence, Mr Zadkovich, 3 April 2017, p 8.

- 3.51** The committee reiterates the concern expressed by the 2010 Upper House inquiry that the NSW Government risks breaching their legal obligations to students with disability. Similar to 2010, participants during this inquiry indicated that students with disabilities and special needs in New South Wales cannot equitably access and participate in education on the same basis as their peers, due to a continued lack of funding.
- 3.52** The committee is of the view that schools require the full allocation of funding as originally agreed under the NERA in order to achieve a minimum resource standard.

Finding 3

That New South Wales schools will not receive the full allocation as originally agreed under the National Education Reform Agreement due to the Gonski 2.0 policy adopted by the Commonwealth Government, and this will have impacts on students with a disability.

- 3.53** The committee therefore recommends that the NSW Government review and report on the impact of Gonski 2.0 and ensure that adequate funding is provided to government schools to meet the needs of students with disabilities and special needs. This funding could be provided by the Commonwealth or the NSW Government.

Recommendation 3

That the NSW Government review and report on the impact of Gonski 2.0 on students with disability in New South Wales schools.

Recommendation 4

That the NSW Government works with the Commonwealth Government to increase the overall funding available to ensure that adequate funding is provided to government schools to meet the needs of students with disabilities and special needs.

Impact of the RAM in government schools

- 3.54** While there was generally widespread support for the ESES initiative as a ‘driver of many positive improvements in schools,’ stakeholders questioned the level of funding and resources available to schools under the flexible RAM³²². Key concerns were raised regarding the capping of funding under the model, use of NAPLAN in determining funding, how the funding calculations under equity loading component of the RAM are inadequate for staffing allocations and issues with the accessing and funding of the Integration Funding Support Program.

³²² Submission 155, NSW Primary Principals’ Association, p 5. See also, Submission 71, Ms Robyn Armstrong; Submission 85, Name suppressed, p 1; Submission 126, Federation of Parents and Citizens Association of New South Wales, p 11.

- 3.55** As discussed above, the ESES initiative reorganised existing learning support positions and targeted funding previously applied for by students with mild intellectual disability and language disorders into the low level adjustment for disability equity loading (equity loading). This then provides flexible funding and staffing allocations for School Learning and Support Teams at a level determined by the profile of the school, using the Student Learning Needs Index (SNLI).³²³

Capping of funding and use of NAPLAN results

- 3.56** The NSW Teachers Federation raised concerns about the nature of ESES, expressing the view that the initiative was ‘designed to stem the 11 per cent annual growth ... of special needs education’ by ‘capping costs’ and ‘devolving responsibility to individual schools’ rather than delivering adequate resources to meet the needs of students with disability.³²⁴
- 3.57** In their discussion of the formulation of the RAM, the NSW Teachers Federation questioned the use of historical NAPLAN results under the SNLI, arguing the methodology is ‘based on relative needs of the school within the system’, rather than ‘a needs-based index, which allocate[d] resources based on actual need within the school’, which resulted in an inadequacy of funding under the equity loading.³²⁵
- 3.58** Indeed, other stakeholders questioned the inequity of linking funding to academic achievement in NAPLAN, parents and teachers alike argued it was ‘an unfair way of measuring students’ learning and subsequent funding requirements. Students with long term diagnoses lose or have their funding capped according to their results in a single test³²⁶ rather than on need, with further concerns raised regarding the funding impact for students who are discouraged from participating in NAPLAN.³²⁷

Funding calculations leading to inadequate staffing allocations

- 3.59** While the NSW Primary Principals’ Association acknowledged that ‘funding has increased for some students³²⁸ they argued, like other stakeholders, that the Learning and Support Teacher (LaST) allocations and entitlements continued to be insufficient and that some schools experienced a reduction in School Learning Support Officer (SLSO) allocations. In general they commented that overall funding and resources have not kept pace with the increased demand and complexity of student need faced by schools.³²⁹

³²³ Submission 135, NSW Government, pp 7-8 and 19.

³²⁴ Submission 143, Australian Education Union New South Wales Teachers Federation Branch, pp 16-17.

³²⁵ Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 17.

³²⁶ Submission 57, Name suppressed, p 1.

³²⁷ Evidence, Dr Rachael Sowden, Delegate from New England, Federation of Parents and Citizens Associations of New South Wales, 3 April 2017, p 33. See also, Submission 67, Name suppressed, p 1; Submission 157, The Professional Association for Learning Support Inc, p 5; Submission 383, Name suppressed, p 2; Submission 344, Homebush Public School, p 2; Submission 391, Name suppressed, p 2.

³²⁸ Submission 155, NSW Primary Principals’ Association, p 6.

³²⁹ For example, Submission 38, Ms Jan Pennisi, p 1; Submission 51, Name suppressed, p 1; Submission 63, Sussex Inlet Public School, p 1; Submission 212, Clairgate Public School, p 1; Evidence, Mr Waight, 8 May 2017, p 5.

3.60 Ms Sarah Rudling, Principal, Barrack Heights Public School, provided details of the funding available to meet the needs of students at her school, where 81 per cent of students received adjustments. Ms Rudling argued current staffing allocations and flexible funding were not sufficient to adequately support the additional needs of students:

The \$30,000 that is left over is for me to meet the needs of students with a low-level disability, and many of my 81 per cent would fit into that category. I did some maths last night. If I were just to provide a school learning support officer [SLSO] for that money my kids would get 3½ hours of support per year with an SLSO. That is not what they need. They need a highly educated and skilled professional to be working with them to close the gap for all children.³³⁰

3.61 One school stated that ‘it isn’t possible to have “immediate” access to additional support for students with disability in regular classrooms as our school only receives 0.7 LaST allocation.’³³¹ In addition, Ms Jan Pennisi, teacher, indicated that with the introduction of School Learning and Support Teams, ‘I gained an additional 0.5 LaST, a wonderful staff member who works very hard but it cost me 6 SLSOs.’³³²

3.62 The NSW Department of Education refuted claims that schools were worse off under ESES. With respect to the evidence received from Ms Pennisi, Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, contested the reduction in aides (SLSOs) as a school decision to use their now flexible funding differently, with the Department arguing the school had received an increase in learning and support funding under ESES.³³³

3.63 Indeed, Mr Harris, acknowledged that for students with additional learning needs buying SLSO time might not be the best provision of support and argued that the flexibility of the funding model enabled schools to make decisions regarding the best use of those funds to meet the needs of their students.³³⁴

3.64 The NSW Government advised that under ESES, more than 2,000 schools received learning and support teacher positions, 96 assistant principal learning and support positions were created and ‘over 400 government schools received a specialist teacher allocation for the first time, including many smaller, rural and remote schools’. Mr Harris assured the committee that ‘no school went backwards’.³³⁵

Integration Funding Support Program

3.65 As discussed above, under ESES schools may apply to receive additional targeted funding for eligible students with moderate to high needs, through the Integration Funding Support Program. While the Department advised that funding under the program was uncapped, many

³³⁰ Evidence, Ms Sarah Rudling, Principal, Barrack Heights Public School, 19 May 2017, p 30.

³³¹ Submission 62, Name suppressed, p 2.

³³² Submission 38, Ms Jan Pennisi, p 1.

³³³ Evidence, Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, 8 May 2017, p 43; Answers to questions on notice, NSW Department of Education, 14 June 2017, p 1.

³³⁴ Evidence, Mr Harris, 8 May 2017, pp 44-45.

³³⁵ Submission 135, NSW Government, p 19; Evidence, Mr Harris, 8 May 2017, p 43.

stakeholders indicated that funding was difficult to obtain for students with moderate to high needs who did not meet the eligibility criteria and funding was often insufficient and/or delayed to adequately support student needs.

- 3.66** Stakeholders expressed the view that the NSW Department of Education Disability Criteria used to determine targeted funding for individual students under the Integration Funding Support Program was an ‘arbitrary funding criteria that exclude[d] a large number of students needing support.’³³⁶ Ms Michelle McLellan, parent of a child with Aperts syndrome, which causes physical disability and developmental delay, argued the process was impersonal and focused on criteria rather than need:

In the beginning the department coded my son's disabilities into boxes and once again Aperts syndrome missed those boxes, so he did not get the reasonable hours that he really required. Not one person from the department to this day has come out to visually assess my son in his environment. It is horrifying to know that the future of my son's education lies in the hands of people who have never met him. They are simply making big decisions from a number on the page.³³⁷

- 3.67** Ms McLellan, further commented about the length of time funding took to commence, stating ‘Once that [funding] was approved, it took until May the following year, 2016, for the funding to commence.’³³⁸ Indeed funding delays were a point of concern for stakeholders, who argued this unnecessarily impacted on schools, teachers and students. Ms Pennisi was of the view that ‘[b]etter systems in my current setting would mean that our most at-risk students are not waiting months for integrated funding’.³³⁹ Barriers to accessing funding caused by the request process are discussed in Chapter 4.

- 3.68** While stakeholders expressed views concerning the number of students who do not meet the disability criteria, the committee heard similar concerns regarding the amount of funding available. Some stakeholders expressed the view that ‘integration funding is rarely enough’,³⁴⁰ and Ms Pennisi was of the view:

... prior to the ESES model I could make an application for a student with any form of mental health or autism for integrated funding, and they were very successful. Once they went to the ESES model, I cannot make an application for a student with what we call mental health one [MH1] or mental health two [MH2] or straight out autism [AU]. They are not funded. Any student in my setting with an intellectual disability is not eligible for funding.³⁴¹

- 3.69** Mr Harris, NSW Department of Education, argued that this was the intention of ESES, stating that for many students ‘[t]here was a removal of the need to apply for direct funding for students with low level disability’ as those ‘funds were put into the schools under the

³³⁶ Submission 57, Name suppressed, p 2. See also, Submission 155, NSW Primary Principals' Association, p 2; Submission 114, Name suppressed, p 1.

³³⁷ Evidence, Ms Michelle McLellan, Parent, 8 May 2017, p 14.

³³⁸ Evidence, Ms McLellan, 8 May 2017, p 15.

³³⁹ Evidence, Ms Pennisi, 8 May 2017, p 2. See also, Submission 41, Kathy Dobinson, pp 1-2.

³⁴⁰ Submission 62, Name suppressed, p 1. See also, Submission 57, Name suppressed, p 1; Submission 326, Ms Amanda Wells, p 1.

³⁴¹ Evidence, Ms Pennisi, 8 May 2017, p 9.

resource allocation model [RAM] as part of equity loading³⁴², which is flexible to allow schools to choose how they spend the additional funding.³⁴²

- 3.70** An additional issue raised during the inquiry was the inability of students receiving targeted funding to transfer funding between settings, due to the nature of the Integration Funding Support Program providing funding to a school rather than a student. The following example was provided by the NSW Secondary Principals' Council:

If a student accessing integration funding is placed for a period of time in an alternate school setting the integration funding ceases and has to be reapplied for when the student returns to the home school. This process is cumbersome and the loss of funding occurs at a critical time hindering appropriate transition support.³⁴³

Impact of disability definitions

- 3.71** Chapter 1 outlined the legislative and policy framework within which education is provided to students with disability. Stakeholders argued there was a disparity between the legal obligations of schools under the legislative framework and the levels of funding received by schools as determined by the NSW Department of Education Disability Criteria.
- 3.72** This section will examine concerns raised by stakeholders regarding the unmet need caused by the disparity between legislative and funding definitions of disability, how diagnosis rather than need continues to drive funding allocations and how schools are stretching funding received for students who meet the eligibility criteria to meet the needs of those who do not. The impact of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) initiative on understandings of unmet need will also be discussed.

Legal obligations, disability criteria and funding

- 3.73** Stakeholders across all sectors raised concerns that the discrepancy between the legal obligations of schools and the funding provided to meet those obligations was substantial and resulted in a shortfall of funding, described as an 'unmet need'. Ms Barbara Leiton, Member of the NSW Independent Education Union, stated that the 'big discrepancy between what was originally defined as a disability and what the Act actually requires schools to do is quite shocking. ... That funding shortfall is a reality and it is what we are dealing with day today.'³⁴⁴
- 3.74** Ms Pam Smith, Assistant Secretary and Women & Equity Committee Convenor, NSW Independent Education Union, argued that the funding criteria has not evolved to match the legal obligation, stating, 'we are relying on understandings of what constituted disability some

³⁴² Evidence, Mr Harris, 8 May 2017, p 43.

³⁴³ Submission 121, NSW Secondary Principals' Council, p 3. See also Submission 108, Name suppressed, p 1.

³⁴⁴ Evidence, Ms Barbara Leiton, Member, NSW Independent Education Union, 3 April 2017, p 18. See also, Submission 31, Ms Julie Parsons, p 1; Submission 35, Name suppressed, p 1, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 10; Submission 210, Name suppressed, p 2, Submission 242, Name suppressed, p 1.

years ago rather than more contemporary understandings ... the funding needs to keep pace with those understandings.³⁴⁵

- 3.75** As already discussed stakeholders raised concerns about the impact this had on targeted funding in government schools, and concerns were also raised about the impact a denial of funding had on access to education and support (discussed in Chapter 4), and the distressed caused to families, teachers, and schools. One school commented:

Our staff and parents are at times visibly distressed when students are refused funding under the current model. Teachers have both a responsibility and a need to support parents of students with disabilities. Teachers' recommendations for financial support are denied for what are deemed 'mild' disabilities, particularly within the secondary setting. This means that students whom teachers know need immediate access to educational and mental/emotional support are denied through a rejection of funding.³⁴⁶

Criteria based on diagnosis

- 3.76** In response to questions regarding a specific diagnosis and its status within the NSW Department of Education Disability Criteria the Department advised that applications for targeted funding are individually assessed on student impairment and need, not on specific conditions or diagnosis, stating:

...consideration is given to the condition and the impact of the resulting impairment upon the student's learning. ...Where the student does not meet the department's disability criteria and there is evidence that the student has a significant condition that is not adequately described by one or more of the criteria and the condition is impacting greatly on their educational outcomes, the school psychology and counselling service will consider all available documentation and make a determination on a case by case basis.³⁴⁷

- 3.77** However, despite the position of the Department that funding is provided on a needs basis, parents advised that in their experience the current system remained diagnosis based, more diagnoses resulting in more funding. Dr Melanie Heyworth, recounted her experience:

...the more diagnoses my son had on paper, the more funding he got. His needs did not actually change—they remained the same—but as we got extra pieces of paper, he got more money. ... we are very outdated in schools to still be reliant on that piece of paper that says, "This child has this diagnosis and therefore has these needs and can be allocated this much money."³⁴⁸

- 3.78** Schools equally acknowledged that as diagnosis determined funding and eligibility for placement, '[m]any students have been rebadged ... [c]hanging their primary diagnosis to a mental health category to fit the selection criteria for an alternative placement.'³⁴⁹

³⁴⁵ Evidence, Ms Pam Smith, Assistant Secretary and Women & Equity Committee Convenor, NSW Independent Education Union, 3 April 2017, p 18.

³⁴⁶ Submission 51, Name Suppressed, p 2.

³⁴⁷ Answers to questions on notice, NSW Department of Education, 14 June 2017, p 11.

³⁴⁸ Evidence, Dr Melanie Heyworth, Parent, 27 March 2017, p 30.

³⁴⁹ Submission 52, Name Suppressed, p. 1.

- 3.79** Stakeholders were equally open with the committee about the ‘goodwill’ which exists across educational settings that allows the funding support provided for eligible students to be stretched to meet similar unmet needs of students who do not receive targeted funding. Ms Smith, from NSW Independent Education Union, commented:

Our members are very much aware of the disability discrimination legislation and would never wish to divert any targeted funding from a child. But I think it goes back to the issue that sometimes if you can use some of that—if you can include another child to be in the situation and in the support—the goodwill that is there and the unmet need will probably let that happen to some extent. I would agree with principals that they are very mindful of never diverting funding from a targeted student but there are significant pressures to spread the resourcing as far as possible because of unmet need.³⁵⁰

- 3.80** The NSW Independent Education Union advised that the Gonski Review highlighted inconsistencies in disability definitions nationally and noted that ‘additional funding should be based on the cost of making reasonable educational adjustments to participate in schooling on an equal basis’. In their view the Gonski Review gave support to a ‘level of funding for SWD... linked to the level of adjustment identified in NCCD’.³⁵¹

Nationally Consistent Collection of Data on School Students

- 3.81** Commencing in 2012 the Nationally Consistent Collection of Data on School Students with Disability (NCCD) initiative was introduced to all Australian schools as a way to collect ‘nationally consistent and reliable information about students who receive additional support in schools as a result of disability’. The NCCD was completed by all schools for the first time in 2015 and while not originally introduced as part of the Gonski reforms has subsequently ‘informed policy and funding decisions concerning students with disability’. The NSW Government advised that they strongly supported the NCCD.³⁵²

- 3.82** Evidence from the non-government sector, for both Catholic and independent schools, indicated that only one third of students identified as receiving support under the NCCD are also receiving additional NSW Government funding. The CECNSW advised:

The NCCD applies the disability definition found in the Disability Discrimination Act 1992, which is a broad definition of disability, and can include students with mild medical impairments, as well as learning and impulsive behavioural difficulties. On average only one third of students identified by the application of NCCD criteria are also identified applying State SWD criteria.³⁵³

- 3.83** Additionally, the CECNSW argued that ‘[s]tudent identification data suggests that disability services access is still an equity issue for rural schools’, pointing to the higher percentage of students with disability in non-metro schools in the NCCD data compared to state based data,

³⁵⁰ Evidence, Ms Smith, 3 April 2017, p 16.

³⁵¹ Answers to questions on notice, NSW Independent Education Union, 28 April 2017, p 1.

³⁵² Submission 135, NSW Government, pp 28-29.

³⁵³ Answers to questions on notice, Catholic Education Commission NSW, 21 April 2017, p 16; Submission 166, NSW Independent Education Union, p 1.

as an indicator of lack of diagnostic services in non-metro areas which results in a lack of additional funding for students with disability in rural and regional New South Wales.³⁵⁴

- 3.84** Since its rollout across all schools questions have been raised regarding the quality and reliability of the NCCD data, evidence received from stakeholders to this inquiry varied in their support for funding decisions to be based on the NCCD.³⁵⁵
- 3.85** However, the NSW Independent Education Union argued that despite contention regarding methodology, the NCCD was more inclusive and comprehensive as it included information on all students receiving adjustments, not just those with a diagnosis or who met the state criteria, reflecting ‘that there is an enormous unmet need, whether it is from the AIS, the Catholic sector, State or nationally ... that need is very significant, that need is growing ... [and] there is a very significant need for increased funding’.³⁵⁶

Committee comment

- 3.86** The committee is concerned about the inequity of the current funding model for government schools, under which funding for School Learning Support Teams is tied not to need but to academic achievement, and calls on the NSW Government to replace NAPLAN as the basis for the SLNI which determines the low level adjustment for disability equity loading, with a methodology which assesses student need based on information gathered by the NCCD.
- 3.87** The committee is of the view that a methodology based on NCCD not NAPLAN would ensure the needs of a greater number of students who do not meet the NSW Department of Education Disability Criteria for targeted funding can be met by schools using equity funding.
- 3.88** The committee is also concerned that the Disability Criteria negatively impacts on funding for students with moderate to high needs across all sectors who do not meet the criteria, resulting in a diagnosis rather than needs based approach to eligibility for targeted funding under the Integration Funding Support Program in government schools and the availability of additional funds and resources to non-government schools. The committee recommends that the NSW Government review the NSW Department of Education Disability Criteria to ensure it is in keeping with contemporary understandings of disability.

³⁵⁴ Submission 133, Catholic Education Commission NSW, pp 19 and 25.

³⁵⁵ For example, Submission 133, Catholic Education Commission NSW, p 8; Answers to questions on notice, Catholic Education Commission NSW, 21 April 2017, p 16; Evidence, Ms Vera, 3 April 2017, pp 5-6; Submission 126, Federation of Parents and Citizens Associations of New South Wales, p 8; Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 12; Submission 206, Sir Joseph Banks High School, p 6; Submission 258, Merrylands East Public School, p 2.

³⁵⁶ Evidence, Ms Leiton, 3 April 2017, pp 16-17; Evidence, Ms Smith, 3 April 2017, p 12.

Recommendation 5

That the NSW Government use data collected through the Nationally Consistent Collection of Data on School Students with Disability instead of NAPLAN in the Student Learning Needs Index, as the basis for calculating the low level adjustment for disability equity loading.

Recommendation 6

That the NSW Government use data collected through the Nationally Consistent Collection of Data on School Students with Disability as an alternative indicator of need in calculating additional funding provided to non-government schools.

Recommendation 7

That the NSW Government review the NSW Department of Education Disability Criteria to ensure it is in keeping with contemporary understandings of disability.

Interface with National Disability Insurance Scheme

- 3.89** The intersection of health and education services was a reoccurring topic throughout the inquiry with questions raised regarding the impact of the National Disability Insurance Scheme (NDIS) on the provision of education supports to students with disability. Further discussion of access to allied health services can be found in Chapter 4.
- 3.90** The National Disability Services advised the committee that the NDIS will address the ‘core support needs’ of eligible children with disability, but not provide education services, and that in future access to allied health services will be determined by the restrictions of NDIS policy, parental choice, and a schools capacity to pay.³⁵⁷
- 3.91** This distinction between NDIS funding and education funding was discussed by Ms Vera, NSW Teachers Federation, who stated that ‘[i]t has been made clear at a State and Federal level that the NDIS will not be picking up any existing gaps or picking up any tasks of the Department of Education with regard to supporting students with disability.’³⁵⁸
- 3.92** Evidence of this separation was also received from Ms Jennifer Kemp, General Manager, Client Services, Lifestart, who said that there was unclear communication around the distinctions, stating ‘there are a lot of grey zones around the NDIS’ in practice which is causing confusion:

One of the real issues is partly a misunderstanding by everyone about whose jurisdiction particular responsibilities lie in. The National Disability Insurance Agency is clear where the Department of Education's responsibilities are. I think there have been expectations by families and by our staff, who would like to think that there would be more funding through the NDIS for work in schools, but that is the responsibility of the education system.³⁵⁹

³⁵⁷ Submission 161, National Disability Services, pp 13-14.

³⁵⁸ Evidence, Ms Vera, 3 April 2017, p 3.

³⁵⁹ Evidence, Ms Jennifer Kemp, General Manager, Client Services, Lifestart, 3 April 2017, p 61.

- 3.93** The Federation of Parents and Citizens Associations of New South Wales provided examples of the limited type of NDIS funded support which may be available to students for use at school including:
- assistance with self-care care at school, related to the participant's disability such as assistance with eating or mobility
 - specialist transport required because of the student's disability
 - equipment that is transportable such as a wheelchair, personal communication device or a hearing aid
 - specialised or intensive support to transition between schools, or from school to post-school options.³⁶⁰
- 3.94** Of greater concern for stakeholders was the impact of the cessation of block funding provided to service providers which allowed students to benefit from services, but will be excluded in future if they are not eligible for NDIS support. Ms Jessica Lobo, Senior Sector Development Officer, National Disability Services advised that under the NDIS model with stricter demarcation lines and the end of block funding '[i]t is no longer possible for the disability sector to fill some of the gaps in the education system in the way it has done previously' by providing programs, teacher support and expertise for free.³⁶¹ Ms Lobo additionally noted that only a small percentage of students with disability in public schools, 'three to four per cent... will be accessing the NDIS and therefore Education needs to do its part as well.'³⁶²
- 3.95** Additionally, the NSW Teachers Federation advised that as only students with significant and permanent disability are covered by the NDIS scheme, the 'Federation fears that with the withdrawal of ADHC specialist services' there will be a 'group of students [who] will not be given the support that they require' which they argue may 'extend schooling obligations'.³⁶³
- 3.96** The NSW Department of Education advised that only around 40,000 students are anticipated to receive supports through the NDIS and that the 'NDIS is not expected to fundamentally change the way schools operate on a day-to-day basis... Schools remain responsible for providing reasonable adjustments, or personalised learning and support for students with disability, to enable them to fully participate in education on the same basis as other students.' Further, the management of any 'overlap' will be finalised before the 'NDIS is fully in place in July 2018. In the meantime there is no change to the way NSW [G]overnment schools fund or provide personalised learning and support.'³⁶⁴

Committee comment

- 3.97** The committee is of the view that the NDIS has potential benefits for the small percentage of students who are eligible to receive support at school. Thought should be given to how funding for individual students under the NDIS could be pooled in a school setting to get the

³⁶⁰ Submission 126, Federation of Parents and Citizens Associations of New South Wales, p 3.

³⁶¹ Evidence, Ms Jessica Lobo, Senior Sector Development Officer, National Disability Services, 3 April 2017, pp 70-71; Submission 161, National Disability Services, pp 13-14.

³⁶² Evidence, Ms Lobo, 3 April 2017, pp 71-72.

³⁶³ Submission 143, Australian Education Union New South Wales Teachers Federation Branch, pp 32-33.

³⁶⁴ Submission 135, NSW Government, pp 41-42.

best outcomes for the students that require specialist services, such as when a number of students in the one school or classroom require the services of a speech pathologist. Further discussion of access to specialist support is made in Chapter 4.

Funding for specialised settings in government schools

- 3.98** The inequity and inadequacy of funding available to students in specialised settings, including Schools for Specific Purposes (SSPs), support classes in mainstream schools and other specialised settings, was a concern raised by stakeholders throughout the inquiry.
- 3.99** The NSW Government advised that SSPs receive flexible funding under an adjusted RAM model. This includes a base allocation and equity loadings (with the exception of the low level adjustment for disability loading) and the addition of enhanced teacher staffing entitlements ‘according to the needs profile of their students’.³⁶⁵
- 3.100** Stakeholders commented that the funding arrangements across specialised settings varied considerably between educational settings and across operational areas. The Special Education Principals’ and Leaders’ Association NSW (SEPLA) were of the view that ‘[s]tudents with disability or an additional learning need have access to an inconsistent level of funding dependent upon the operational area in which their school is located.’³⁶⁶
- 3.101** Mr Peter Skinner, President, Special Education Principals’ and Leaders’ Association NSW, stated that: ‘[s]pecial educators face the most complex learners in the education system with passion, enthusiasm and creativity. The inequitable funding of these students sends a message that students with complex learning needs do not warrant equitable funding.’³⁶⁷
- 3.102** During the inquiry, issues were raised by stakeholders related to funding for specialised settings and student access to education and academic achievement within these schools.³⁶⁸ The key funding issues raised focused on funding inadequacy, access to equitable ongoing additional funding, funding for secondary students, and inequitable executive support and teacher release.

Funding inadequacy and access to equitable ongoing additional funding

- 3.103** The committee received evidence that current levels of funding, particularly for students with complex needs, is inadequate and that SSPs are limited in their capacity to attract additional funding to address complexities in student need. While SEPLA advised that ‘Student Support Funding is funding allocated by operational directorates to support the additional needs of

³⁶⁵ Submission 135, NSW Government, p 13.

³⁶⁶ Submission 160, Special Education Principals’ and Leaders’ Association NSW, p 1.

³⁶⁷ Evidence, Mr Peter Skinner, President, Special Education Principals’ and Leaders’ Association NSW, 27 March 2017, p39.

³⁶⁸ For example, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 6; Submission 325, Name suppressed, pp 1-2; Submission 353, Karonga SSP, p 1; Evidence, Ms Tracy Gocher, Councillor, Special Education Committee Member and NESA Special Education Advisory Committee Federation Representative, NSW Teachers Federation, 3 April 2017, p 8.

students on a short term basis',³⁶⁹ the committee heard that under ESES/RAM arrangements, SSPs do not receive the low level adjustment for disability which provides schools with learning and support allocations, nor do they have a 'process to request a higher level of support once [a] placement has been made'.³⁷⁰

- 3.104** The NSW Secondary Principals' Council advocated for a specialist staffing entitlement to meet the needs of students with high support needs, advising that schools are devoting substantial percentages of their budget to specialist services:

Schools with students with high support needs, in particular Schools of Specific Purposes, require a staff entitlement for specialists such as Speech Therapists, Occupational Therapists, physiotherapists, and nurses where there is a large percentage of students on medication, to meet the needs of their students. A NSWSPC principal noted that they have spent 50% of their global budget to employ three therapists for two days a week.³⁷¹

- 3.105** A specialist emotional disturbance school similarly advised that their funding remained inadequate:

As a small school with up to 33 students, our budget is tiny. Our equity loadings add up to a few thousand dollars - not enough to employ a psychologist, or other paraprofessional who could provide the support our children desperately need.³⁷²

- 3.106** Mr Matthew Johnson, Principal Glenvale School, indicated that SSPs were required to be reactive to the particular enrolment cohort. Variances in enrolment can result in significant change where 'you have to restructure the entire school and the timetable' to reflect the level and need of students. Mr Johnson further explained that vacancies were based on a combination of the number of students 'dependent on the factor of need. So it is not the simple student count; it is the complexity of the student—whether they are a factor 1.111 up to 1.666'.³⁷³

- 3.107** Stakeholders argued that the factor of need used to determine enrolment, should also apply to determine funding, as the factor of need reflected a student's complexity of need and would provide a more sufficient level of funding not currently available. SEPLA suggested that:

Principals of SSPs and leaders in support classes have indicated that applying a student's factor of need that determines their enrolment, rather than just their number, would allow for a meaningful and equitable level of support to these students.³⁷⁴

³⁶⁹ Submission 160, Special Education Principals' and Leaders' Association NSW, p 2.

³⁷⁰ Submission 160, Special Education Principals' and Leaders' Association NSW, p 3.

³⁷¹ Submission 121, NSW Secondary Principals' Council, p 5.

³⁷² Submission 108, Name suppressed, p 2.

³⁷³ Evidence, Mr Matthew Johnson, Principal, Glenvale School, 8 May 2017, p 35.

³⁷⁴ Submission 160, Special Education Principals' and Leaders' Association NSW, p 1. See also, Submission 2, Name suppressed, p 1; Submission 168, South Western Sydney Primary and SSP Principals, p 11.

Funding for secondary students

- 3.108** The provision of equitable education to secondary students attending SSPs was a critical concern for stakeholders who argued that the staffing and funding of SSPs using a primary school formula disadvantaged secondary students.³⁷⁵ This limited their funding and resources and impacted on the educational opportunities for those students. Despite recommendations from the 2010 inquiry calling on the NSW Government to address the funding anomaly, the NSW Secondary Principals' Council advised that 'this has not been addressed':

SSPs are still staffed and funded on a primary school formula even though enrolments may include secondary students. Primary schools generally receive less funding and staffing entitlement than high schools, therefore the high school aged students attending SSPs are staffed and funded at a lesser level. This anomaly reduces these schools base funding and staffing, executive support allocation and teacher preparation time in release from face to face allocation as it is used to cover the shortfall for these students. This model also inhibits access to secondary curriculum options and specialist resources and staff. For example, most SSPs do not have a science laboratory, a technology facility or a teacher with this expertise. Thus SSPs with secondary enrolments are restricted in the support and educational provision they can provide that will allow students to participate fully.³⁷⁶

- 3.109** The NSW Secondary Principals' Council provided the following example to demonstrate the issues with inequitable funding for secondary students in specialised settings:

One NSWSPC principal of a large rural SSP has noted that three quarters of the 120 student cohort are secondary. The teachers are all primary trained and there are no specialist rooms such as visual arts, science laboratories or food technology kitchens to use so the teachers have to use their classroom. 30% of these secondary students do not have an intellectual disability and should be accessing mainstream outcomes but up until 2015 all students were placed on life skills because of the staffing and resource inadequacies. Since 2016 a move has been made to ensure that these students are now accessing mainstream curriculum which is differentiated, but this has placed a significant workload on primary trained teachers without the necessary knowledge or equipment required to deliver the course. These students have all previously accessed mainstream school, but due to mental health conditions such as anxiety/depression and self-harming; trauma, and autism diagnosis these students were unable to maintain their enrolment.³⁷⁷

- 3.110** Education and support for secondary students in specialised settings is discussed in Chapter 4.

Inadequate executive support and teacher release

- 3.111** Inadequate executive support and teacher release in all specialised settings was of equal concern for stakeholders. The NSW Teachers Federation was of the view that 'an insufficient number of executive positions increases workload for the classroom teachers and executives

³⁷⁵ For example, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 25; Submission 221, Ms Lisa Golding, p 1; Submission 245, Name suppressed, p 1.

³⁷⁶ Submission 121, NSW Secondary Principals' Council, p 7.

³⁷⁷ Submission 121, NSW Secondary Principals' Council, p 7.

currently appointed to these settings and inhibits the capacity of the school to maximise learning outcomes for students with disability’.³⁷⁸

- 3.112** Mr Gary Zadkovich, Deputy President, NSW Teachers Federation, advised that the Gonski funding should provide the NSW Department of Education with the capacity to rectify staffing entitlements to better reflect the needs of students:

To date, we have not been able to come up with a new staffing formula for SSPs. We have had a history of hybrid staffing formulae that has not properly reflected the meeting of the students’ needs and the staffing that is required. ... [Gonski] ... is the resourcing and the funding which will enable the department to properly support schools in terms of personnel, staffing levels and funding to implement programs at the school level.³⁷⁹

- 3.113** Mainstream schools with a large number of support class enrolments, often of a similar or larger size to SSPs, expressed concern that ‘[i]n most cases there is no further executive release irrespective of the number of classes established’.³⁸⁰

- 3.114** Stakeholders advised that as a consequence of underfunding of specialised settings they felt they were limited in their ability to provide safe learning environments for students and staff which met work, health and safety requirements. SEPLA stated:

Students present with violent or aggressive behaviours toward themselves, staff or students, however there is no long term additional funding to support safety and wellbeing. Students with these behaviours have a profound impact on the safety, learning and wellbeing of the entire school community. The current funding for these students is inadequate to meet the lawful work health and safety requirement. In SSPs where there is a high concentration of these students enrolled, the risks in managing these student’s is significant.³⁸¹

- 3.115** In response to the view of stakeholders that it was time for a full review of funding and staffing entitlements for all specialised settings, Mr Scott, Secretary, NSW Department of Education, advised that while funding anomalies did exist, in real terms funding for SSPs had increased over the last three years:

There is more money coming into the system and into the schools but SSPs have received a greater percentage increase. That is the data I have. I appreciate we will have long debates and people are passionate about whether that money is enough and I would expect strong advocacy for more funding. I would be surprised if I did not get that. I would be more concerned if the allegation was that the staffing or funding formula has worked in a way to strip money away from SSPs and SSPs had been disadvantaged when more money had been allocated to schools. The evidence indicates the contrary of that. The percentage increase in budget for SSP schools, compared to all schools, SSPs are well ahead in the last couple of years. We are going

³⁷⁸ Answers to questions on notice, NSW Teachers Federation, 8 May 2017, p 4.

³⁷⁹ Evidence, Mr Zadkovich, 3 April 2017, p 9.

³⁸⁰ Answers to questions on notice, NSW Teachers Federation, 8 May 2017, p 4. See also Submission 206, Sir Joseph Banks High School, pp 2 and 4.

³⁸¹ Submission 160, Special Education Principals’ and Leaders’ Association NSW, p 3. See also, Submission 155, NSW Primary Principals’ Association, p 4; Evidence, Mr Robert Deacon, Teacher, 23 June 2017, pp 31- 32.

to review it. I think the Committee should have confidence that is the broad setting we are dealing with in recent years.³⁸²

Committee comment

- 3.116** While we acknowledge the advice of the NSW Department of Education that funding for SSPs had increased over the last three years, stakeholders, including those working in specialised settings, have indicated that the funding and staff allocations are inadequate and need to be increased in order to effectively support their students with high needs. The committee is also concerned that the level of funding provided in specialised settings negatively impacts on the ability to deliver aspects of the secondary school curriculum. These issues need to be addressed.
- 3.117** The committee is of the view that the way funding is currently formulated does not adequately reflect the needs of students in specialised settings, nor do the current staffing entitlements, and recommends that the NSW Government work with stakeholders to develop and introduce a funding model which better reflects the needs of students in all specialised settings. This must include additional funding for SSPs to ensure their student population has access to the same services as their mainstream counterparts, such as physical education and careers advice, and adequate teaching support when executive teachers take time for their additional duties.

Recommendation 8

That the NSW Government work with stakeholders to develop and introduce a funding model which better reflects the needs of students in all specialised settings and includes consideration of:

- staffing allocations, including executive support
 - provision of specialist services
 - additional teacher release time
 - work, health and safety requirements
 - secondary school curriculum needs.
-

Expenditure of funds and accountability

- 3.118** While schools receive funding based on the profile of enrolled students, the Department of Education advised that all funding is provided to the school, not to individual students, (including funding received under the Integration Funding Support Program), and in accordance with NSW Department of Education's Local Schools, Local Decisions policy, can be expended flexibly as deemed appropriate by the school principal.³⁸³
- 3.119** Accountability and transparency regarding the expenditure of funding received by schools for students with disabilities and special needs was an issue raised by inquiry participants. This

³⁸² Evidence, Mr Scott, 23 June 2017, p 68.

³⁸³ Submission 135, NSW Government, p 30.

section examines the impact of Local Schools, Local Decisions initiative, the School Excellence Framework and concerns raised regarding lack of consultation, inadequate reporting and the expenditure of funding received for students with disability, particularly targeted funding.

Local Schools, Local Decisions

- 3.120** The NSW Government advised that Local Schools, Local Decisions gives authority to principals to expend funds received through the RAM to best meet the needs of their students, in consultation with parents:

Through Local Schools, Local Decisions, schools have greater freedom and flexibility to make decisions about how best to use public education funds to respond directly to the learning needs of their students through a single school budget allocated through the needs-based Resource Allocation Model (RAM) linked to the school plan. ...

Local Schools, Local Decisions is supporting schools to strengthen consultation with parents and local communities, in order to achieve positive student learning outcomes. Schools also have opportunities to better meet their local needs by working together and combining resources within communities of schools, and across the department's networks of schools.³⁸⁴

- 3.121** Throughout the inquiry concerns were raised regarding the extent of the shift to local decision making under Local Schools, Local Decisions. The Public Service Association argued that increased principal authority over expenditure, could negatively impact the provision of support for students where funds are spent without appropriate accountability, or consultation:

Local Schools, Local Decisions ... places the local Principal as the new arbiter of the needs of the student. In a system where funding is at a premium, the Department has created a system where that limited funding can be diverted without justification or accountability. Parents, who fight long and hard to gain the best possible outcome for their child, may not even know this support is being withdrawn from their child.³⁸⁵

- 3.122** Schools indicated they were expending more on supports for students with disability than they were being allocated under the RAM. In response to questions regarding use of funds for purposes other than providing support to students with disability, the NSW Primary Principals' Association advised that 'it is probably the opposite way in many regards because we get the targeted funding for children and then we top it up as well because we try to give as much support as we can for kids'.³⁸⁶

- 3.123** However, some stakeholders raised the concern that targeted funding received to support individual students was being used flexibly, to support students not in receipt of targeted funding, or diverted for other purposes. The Public Service Association said that:

³⁸⁴ Submission 135, NSW Government, p 30.

³⁸⁵ Submission 199, Public Service Association of NSW, pp 5-6.

³⁸⁶ Evidence, Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals' Association, 27 March 2017, p 43; See also, Submission 168, South Western Sydney Primary and SSP Principals, p 18; Submission 57, Name suppressed, p 2.

Students who receive an individual assessment and are granted support, through the assistance of SLSO or other means, have lost control over their funding. Rather than have an SLSO employed with the funding attached to their assessment, under Local Schools, Local Decisions the money is given to the school which can decide how to spend the money. Although most schools have continued to use the money allocated as intended, our members already report that increasingly they are being diverted from the student who qualified for the support, to assisting other students or other tasks.³⁸⁷

- 3.124** Parents expressed concern that using targeted funding in this way could have a negative effect on the educational outcomes of the student who was eligible for targeted funding. Ms Michelle McLellan, parent, commented:

The system funding allocation is very unfair and poorly managed. If my child has been allocated a pool of funding, this funding should be used to support him and not used on other kids who are not allocated any funding. This is where the system fails our children. The fact that schools can decide how my child's funding is going to be used is very unfair. Only over time will it have a detrimental effect on my child's level of education. But in the long term my child will require more ongoing support, because the foundations of this support were not enough in the beginning.³⁸⁸

- 3.125** A number of parents advised the committee they were unaware that there was not a direct link between a student and targeted funding received by a school. Dr Laura Issa, parent, commented, 'I always assumed that my son got the funding and that it went to my son... I did not scrutinise the numbers.'³⁸⁹

- 3.126** Parents commented that there was a lack of consultation regarding the use of funding. Dr Issa commented that in her experience:

They did disclose to me the number of hours of teachers' aides he was allocated based on the components of his disabilities. There was not a negotiation around how to best use that funding or the allocation.³⁹⁰

- 3.127** Principals and the NSW Department of Education advised that there were policies and systems in place which ensured decisions were not made by the principal alone, that consultation occurred between the school and parents regarding expenditure within the school, and that schools are held accountable for their expenditure both by the Department and their local communities.

- 3.128** Ms Vera, NSW Teachers Federation, outlined the role of the School Learning and Support Teams in assisting principals to make expenditure decisions concerning students with disability:

Learning support teams are required within every school under departmental policy—is our understanding that that is the case.—but the efficacy of those is variable. They are tasked with the distribution and allocation of existing school resources for

³⁸⁷ Submission 199, Public Service Association of NSW, p 5.

³⁸⁸ Evidence, Ms McLellan, 8 May 2017, p 15.

³⁸⁹ Evidence, Dr Laura Issa, Parent, 27 March 2017, p 26.

³⁹⁰ Evidence, Dr Issa, 27 March 2017, p 27.

students with disability. So as far as we are aware principals rely very heavily on that process in order to actually make the decisions around distribution of funds.³⁹¹

- 3.129** Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, detailed the practices and processes which require reporting, transparency and accountability in school expenditure, stating:

There is certainly accountability from the directors of New South Wales public schools around you and the school report. How are you are reporting back against your expenditure? Financial statements are also tabled at Parents and Citizens meetings in each school. Certainly if we are making decisions about resource allocation we are basing that on evidence and feedback from the community and surveys that we do within schools to make sure that we are making, as you say, ethical decisions about best expenditure to ensure outcomes for our kids. There is a level of accountability that goes all across that.³⁹²

- 3.130** Mr Harris, NSW Department of Education maintained there was continued financial oversight of schools at a regional level, stating, '[d]irectors have supervision responsibilities for principals and we talk to them about the processes that are employed.'³⁹³

- 3.131** In addition to regional processes, the NSW Department of Education also pointed to school level consultative planning with parents, learning support processes, representative finance committees, and external review under the School Excellence Framework, as examples of how 'accountability is at the beginning, ongoing and at the end' of planning, implementation, reporting and review procedures.³⁹⁴

School Excellence Framework

- 3.132** The NSW Government stated that under Local Schools, Local Decisions, the School Excellence Framework has been introduced to guide the accountability practices of schools. Under the School Excellence Framework, released in 2015, government schools are now required to plan, report, self-assess and undertake external validation in relation to 'a number of specific areas, including meeting the diverse learning needs of students'.³⁹⁵

- 3.133** Schools develop a three-year plan in consultation with their community which includes the strategic direction and improvement measures for the school including milestones against which schools are able to self-assess and report annually, with external validation to be received from an independent panel of peers every five years.³⁹⁶

³⁹¹ Evidence, Ms Vera, 3 April 2017, p 5.

³⁹² Evidence, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, 27 March 2017, p 47.

³⁹³ Evidence, Mr Harris, 8 May 2017, p 44.

³⁹⁴ Evidence, Mr Harris, and Mr Peter Smith, Director, Public Schools NSW, Callaghan and Port Stephens Network, NSW Department of Education, 8 May 2017, p47.

³⁹⁵ Submission 135, NSW Government, p 30; Evidence, Ms Clements, 27 March 2017, p 13.

³⁹⁶ Submission 135, NSW Government, p 31.

3.134 The NSW Government advised that in 2016, 439 schools underwent external validation, with all schools expected to have completed by 2020.³⁹⁷ In response to questions regarding training in school budgeting and financial planning, the NSW Department of Education indicated that two non-compulsory face-to-face courses are available to principals and executive and administrative staff regarding core financial literacy and strategic financial management. These courses have each been attended by over 1,850 principals and 900 school executives between 2014 and 2016.³⁹⁸

3.135 Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, advised that the School Excellence Framework requires annual reporting on personalised learning and support, providing greater accountability over expenditure relating to students with disability:

Since 2016 all schools are required to report annually on their work in supporting students with disability through a model based on legal obligations to students and evidence of the provisions of personalised learning and support. This activity is further helping to bring accountabilities for supporting students with disabilities into sharper focus.³⁹⁹

3.136 Mr Harris also advised that there had been a shift in the focus of audit requirements of schools, in particular that '[u]nder the previous model we used to talk about: "Show me how the dollars were spent" [but] [n]ow we talk about: "Let's measure the impact on student learning and talk about the quality of outcomes."⁴⁰⁰

3.137 Yet despite the initiatives and requirements of the Department stakeholders were of the view that there was a 'lack of accountability brought about by Local Schools, Local Decisions.'⁴⁰¹ The quality of school annual reports and the depth of information they contained was described by inquiry participants as insufficient.

3.138 Dr Melanie Heyworth, parent, commented that while annual report were a 'good way to get information... [they] are not as easy to read and transparent as' the NSW Department of Education has suggested.⁴⁰²

3.139 Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, reiterated his view in the 2017 Ombudsman's report on behaviour management in schools, that the level of accountability and transparency of targeted funding needs to be improved, commenting that:

... in respect of governance, we have argued that the department should look at how schools can best provide public reports on the use of the integrated funding support component for the funds provided to schools through the resource allocation model [RAM], particularly as it relates to kids with disability, to facilitate greater

³⁹⁷ Submission 135, NSW Government, p 31.

³⁹⁸ Answers to questions on notice, NSW Department of Education, 21 April 2017, p 17.

³⁹⁹ Evidence, Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, 27 March 2017, p 2.

⁴⁰⁰ Evidence, Mr Harris, 8 May 2017, p 44.

⁴⁰¹ Submission 199, Public Service Association of NSW, p 6.

⁴⁰² Evidence, Dr Heyworth, 27 March 2017, p 28.

accountability and transparency on this issue. That is a substantial amount of funds. As a community, we need to have a better line of sight on the use of those funds.⁴⁰³

Committee comment

- 3.140** The committee acknowledges that the Local Schools, Local Decisions policy as it allows schools to have greater freedom and flexibility to make decisions about how best to use funds to respond directly to the learning needs of their students. It also promotes consultation with parents and local communities in the expenditure of those funds. However, we acknowledge the concerns that it lacks transparency in how funding is allocated.
- 3.141** While we note the School Excellence Framework has been introduced to guide the accountability practices of schools, there is still a concern that there is little accountability and transparency in how schools are expending funds from the equity loading and integrated funding support components of the RAM. As noted in the NSW Ombudsman's report there is a reasonable expectation on the part of the school community, including families, that there should be greater transparency in relation to this issue.
- 3.142** Therefore, we recommend that the NSW Department of Education require individual schools to publically report on this expenditure that provides the requisite level of accountability expected by families and the community.

Recommendation 9

That the NSW Department of Education:

- require individual schools to publically report on their expenditure of the equity loading and integrated funding support components of the Resource Allocation Model
 - develop a new reporting mechanism to provide greater transparency and include specific criteria identifying how the needs of students with special needs are being met from the available resources.
-

⁴⁰³ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, 11 August 2017 p 3; NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 61.

Chapter 4 Access to education and support

Students with disabilities and special needs have the right to access education on the same basis as their peers. State and Commonwealth legal and policy frameworks protect students from discrimination by placing obligations on schools to provide reasonable adjustments to ensure equitable access to and participation in education by students with disabilities and special needs.

This chapter will examine how education and support is accessed by students with disabilities and special needs. In particular, it will consider the barriers to enrolment and the adequacy of supports and services available to students across educational settings.

Enrolment

- 4.1** Students with disability and special needs are enrolled in a variety of mainstream and specialised educational settings, across both government and non-government sectors, as outlined in Chapter 1.
- 4.2** For many inquiry participants, accessing education through the enrolment process was an important issue. In particular, the nature of the ‘right’ to enrol was discussed as was the availability of vacancies in specialised settings.

The right to enrol

- 4.3** All schools are bound by their legal obligations to students with disabilities and special needs, as set out in legal instruments such as the Disability Standards for Education 2005, the *Education Act 1990* and the *Anti-Discrimination Act 1977*. As part of the policy framework, these instruments establish the right to enrol and provide for equitable access to education for students with disability on the same basis as their peers.⁴⁰⁴
- 4.4** During the inquiry, the nature of this right and how it should be exercised was raised by a number of inquiry participants, with stakeholders expressing varied expectations of ‘the right to enrol’.
- 4.5** According to parents, for example, this right means they should have the ability to enrol their children in the educational setting of their choosing.⁴⁰⁵ Moreover, for those seeking a mainstream education, parents argued that the right to enrol obligates a student’s local mainstream school to accept enrolment.⁴⁰⁶ For example, Dr Laura Issa, parent, stated:

... your local public school has an obligation to take your child because you are within its catchment but if you are outside a school’s catchment area there is no legal obligation for them to take them...⁴⁰⁷

⁴⁰⁴ Submission 135, NSW Government, Appendix A, pp 45-52.

⁴⁰⁵ For example, Evidence, Ms Suzanne Becker, Chief Executive Officer, Lifestart, 3 April 2017, p 58.

⁴⁰⁶ For example, Evidence, Mr David Roy, Parent and academic, 27 March 2017, p 19.

⁴⁰⁷ Evidence, Dr Laura Issa, Parent, 27 March 2017, p 20.

4.6 However, the Department advised that their legal obligations provide parents with the right to *seek* enrolment at their local mainstream school – not for the school to necessarily accept it. As Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, explained:

The department's policy is that, and under the legislation in fact, every child is entitled to seek enrolment at the local public school where they live in the relevant catchment area. So parents seeking enrolment or applying to enrol is not necessarily a guaranteed enrolment, but it is an application process to enrol.⁴⁰⁸

4.7 Moreover, the Department maintained that educators must be trusted to exercise their professional judgment over the most appropriate setting to meet the particular needs of a student. For parents seeking mainstream enrolment, this may mean receiving educational advice pointing to a more specialised setting to meet the needs of their child. As Mr Murat Dizdar, Deputy Secretary, School Operations and Performance, NSW Department of Education, stated: '...based upon the challenge or complexity or need of that particular child, our educational advice to that family may be that that is not the optimal setting to make sure that student flourishes'.⁴⁰⁹

4.8 Mr Mark Scott, Secretary, NSW Department of Education, acknowledged the tensions in this complex and highly emotive area, noting the passion and concern of parents seeking the best educational opportunities for their child. However, Mr Scott insisted that educators provide expert advice and should be given the opportunity to exercise professional judgment, even if 'profoundly disappointing' for some parents:

... of course we will encounter parents... who are desperate for their children to be enrolled in a school and want their child to have what they perceive to be the most normal mainstream schooling experience possible. We understand their passion and their concern. But the people at that school and providing advice are expert educators and expert educators often about the precise disability that their child has, with clear evidence-based understanding about how to provide the kind of learning environment that will deliver the best educational outcome for that child. To that degree, the department needs to be able to exercise that professional judgement... in providing advice and engaging with that family. So this is clearly an area of complexity and it is clearly an emotionally charged area for families and profoundly disappointing at times on occasion.⁴¹⁰

Barriers to enrolment

4.9 While the committee received evidence from parents who were able to successfully enrol in their local or preferred educational setting, the committee heard from many parents and disability advocates who experienced various forms of enrolment resistance and refusal, particularly when seeking to enrol in a mainstream setting.⁴¹¹

⁴⁰⁸ Evidence, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, 27 March 2017, p 3.

⁴⁰⁹ Evidence, Mr Murat Dizdar, Deputy Secretary, School Operations and Performance, NSW Department of Education, 23 June 2017 p 60.

⁴¹⁰ Evidence, Mr Mark Scott, Secretary, NSW Department of Education, 23 June 2017, pp 60-61.

⁴¹¹ For example, Evidence, Ms Michelle McLellan, Parent, 8 May 2017, p 14.

- 4.10** Some inquiry participants commented that parents felt pressured or discouraged from making certain enrolment choices, either informally where families are told by school secretaries that the ‘school would not be able to cater for their needs’⁴¹², or more formally through educational advice. Ms Cailly, parent and member of Family Advocacy, spoke of the difficulty in disagreeing with educational advice regarding her daughter’s enrolment. ‘...it was never my intention originally to have her in a support unit, but I did not have the emotional strength to fight the decision. I felt quite compelled to enrol her in the support unit at the local school’.⁴¹³
- 4.11** The committee heard that other enrolment practices, such as delayed notification, amounted to barriers to accessing education in an equitable way which impacted on the wellbeing and educational experience of students and their families. For instance, Lifestart advised that students with disability experience delayed notification of successful enrolment—‘they agreed to consider enrolment but that family waited for two months past the point that the other families had enrolments confirmed’—which sends a subtle but strong message that is ‘perceived as their child is not being welcome there’.⁴¹⁴
- 4.12** Ms Michelle McLellan, parent, stated that while she was successful in enrolling, delayed notification was unfair to students and families as it impacted on her son’s capacity to access transition support equitably and created uncertainty regarding enrolment:

We applied for a multi-category support class, which is five kids, one teacher’s aide and one teacher. The department failed to notify me of my child success in our application. This delay means that my son failed to get orientated to the kindergarten program. We had no idea which school my son would be attending until this late notification. The drawbacks of these late notifications are they are disadvantaging kids that are already disadvantaged. The system is unfair not only to the children but also to the families, the teachers and the schools. The delay in finding out what school your child is attending is unsettling, and it needs to stop. It is far from being inclusive.⁴¹⁵

- 4.13** Other parents and advocates recounted experiences of outright enrolment refusal and enrolment practices which they believe were discriminatory and not in keeping with their understanding of Department policies, particularly Every Student, Every School (ESES):

... I had to make concessions to get entry, which at the time I was at my wit’s end because I could not find a school and there was no-one else on my side saying, “No, actually that is an infringement of his rights. You need to accept him in mainstream because that is the preference, that is what the parents want”.⁴¹⁶

... there are then often discussions about behaviours that they cannot manage and they are told that they might be better off going to a different school. ... Then they say that you are not in the zone so they will not take you. You might go to eight schools before you get a school that will accept your child. Getting into a support

⁴¹² Evidence, Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, 3 April 2017, p 59. See also, Evidence, Ms McLellan, Parent, 8 May 2017, p 16.

⁴¹³ Evidence, Ms Yolande Cailly, Member, Family Advocacy, 3 April 2017, p 66.

⁴¹⁴ Evidence, Ms Jennifer Kemp, General Manager, Client Services, Lifestart, 3 April 2017, p 60.

⁴¹⁵ Evidence, Ms Michelle McLellan, Parent, 8 May 2017, p 14.

⁴¹⁶ Evidence, Dr Issa, 27 March 2017, p 24.

class is also very difficult if that is where you want your child to be. That is not what ESES is about.⁴¹⁷

4.14 Many parents expressed the view that in reality they did not have a free choice with regard to enrolment, Ms Cailly, stated, ‘I have made my choice; stop questioning it if it is a choice. If you keep questioning my choice, is it really a choice?’⁴¹⁸ Ms Cailly commented that the questioning of her choice also extended to perceived future high school enrolment options, stating, ‘we are two years away from it and already I am having the conversations’.⁴¹⁹

4.15 While evidence was received which demonstrated that good practices do occur and that students do receive additional support during this time,⁴²⁰ the arbitrary nature of some support and practices and the lack of systemic support, was evident in evidence received by the committee. For instance, Ms Aby Hutchinson-West, Manager Multidisciplinary Services, Northcott, was of the view that parents were again taking on responsibility for managing ‘gaps’ in the primary to high school transition/enrolment process, such as transferring student information:

I think it is about planning and getting to know the kids and making sure the information transfers from one setting to another—and that is not always the case—and identifying the need. When you are talking about moving from primary to secondary, it is a massive change in environment and sometimes the most important stuff does not get to go with the child; it is more about the education levels rather than they might find it difficult to move from classroom to classroom, how do they plan for that. Often families fill that gap and do that planning themselves. They would have to take the information from one school to the next bit rather than that being really well transferred.⁴²¹

4.16 Parents informed the committee that enrolment resistance and refusal were also experienced in the non-government sector.⁴²² Accommodating complexity of need and a schools capacity to make adjustments underpinned much of the evidence concerning enrolment refusal by non-government schools, where acceptance to Catholic and independent educational settings is similarly determined by educational advice regarding appropriateness of a setting and the capacity to provide reasonable adjustments. One parent stated ‘First we went to our local Catholic school but we were shocked to find out that my sons needs were too high and we were told that this school would not be able to accept our enrolment.’⁴²³

4.17 Mr Ian Baker, Director, Education Policy and Programs, Catholic Education Commission NSW advised that within the Catholic education sector, addressing needs and the provision of services was primarily a funding issue, stating:

⁴¹⁷ Evidence, Dr Rachael Sowden, Delegate from New England, Federation of Parents and Citizens Associations of New South Wales, 3 April 2017, p 35.

⁴¹⁸ Evidence, Ms Cailly, 3 April 2017, p 66.

⁴¹⁹ Evidence, Ms Cailly, 3 April 2017, p 66.

⁴²⁰ Evidence, Mr Brett Holland, Teacher, 8 June 2017, pp 5-6.

⁴²¹ Evidence, Ms Aby Hutchinson-West, Manager Multidisciplinary Services, Northcott, 3 April 2017, p 46.

⁴²² For example, Submission 424, Mr Martin McNally, p 1; Submission 203, Mr Sean Rapley, p 2; Submission 39, Ms Jo O’Brien, pp 2-3.

⁴²³ Submission 13, Name suppressed, p 2.

If you have more students you attract more funding. If you have more funding you have more resources and you can then attract more students. If you do not have more funding to begin with you will not have the services. Parents will feel that the school cannot meet the needs of their child and they will go elsewhere.⁴²⁴

- 4.18** Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, questioned the prevalence of enrolment refusal in government schools:

I believe that there is a genuine commitment for principals to enrol. I would not say it is an exception, but there have been instances where in discussions principals have talked—whilst they would be willing to accept an enrolment—about facilities that might be more suitable at a nearby school...That is not a principal refusing; that is looking at what might be the best educational opportunity in consultation and agreement with the parent.⁴²⁵

- 4.19** Mr Harris further commented that when tension occurs between schools and parents, principals are expected, and do regularly, access regional enrolment support, via the Educational Services Learning and Wellbeing Officer, a ‘proactive process’ which provides information concerning enrolment options and discusses ‘what support is available for the student and the school.’⁴²⁶

- 4.20** Ms Clements, NSW Department of Education, agreed more work was required but stated that the Department provides training to:

... support schools and the school executive to understand what are not only their obligations under the legislation but also how best they can engage with families and work with families around their choices for enrolment and what it is they are seeking. That consultation process can also be about the decision-making about what is the best educational placement for a particular child.⁴²⁷

- 4.21** Despite training and the availability of regional support, the committee received evidence that following disagreement or enrolment refusal, the onus was often on parents to find a placement for their child unassisted. Parents felt that there should be an easier way to find an appropriate school and navigate enrolment. One parent commented ‘I must have gone to eight schools’ across the private, public and Catholic sectors.⁴²⁸

- 4.22** Ms Ruth Callaghan, General Manager Stakeholder Relations, Northcott advised that parents ‘are not sure how to navigate the bureaucracy and, in a sense, they need someone simply to

⁴²⁴ Evidence, Mr Ian Baker, Director, Education Policy and Programs, Catholic Education Commission NSW, 27 March 2017, p 59.

⁴²⁵ Evidence, Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, 8 May 2017, p 49.

⁴²⁶ Evidence, Mr Harris, 8 May 2017, p 49. See also Evidence, Ms Meredith Fawcett, Executive Member, NSW Secondary Principals’ Council, 27 March 2017, p 45; Evidence, Mr Dizdar, 23 June 2017, p 61.

⁴²⁷ Evidence, Ms Clements, 27 March 2017, p 4.

⁴²⁸ Evidence, Dr Issa, 27 March 2017, p 20.

walk alongside them’, giving weight to calls for enrolment case managers.⁴²⁹ The need for greater support for parents, potentially through a case manager is raised in Chapter 2 and 6.

- 4.23** Mr Dizdar, NSW Department of Education, advised that schools have an obligation to connect parents with alternative options:

Our expectation as a system would be that if any principal was to... turn away an enrolment, that in doing so they still maintain the obligation to connect them back into the system... If a principal and a school has determined that this enrolment is not suitable for their setting to best meet that child's needs, our expectation as a system would be not just to turn them away... to prevent the exact scenario that you are describing: of parents going across from school to school.⁴³⁰

- 4.24** Mr Scott acknowledged that ‘this is an issue that we need to engage in and respond to’, empathising with parents, stating:

But I would say that to feel that you are on a lost and lonely journey knocking on the doors of schools and having individual principals, probably with the best will in the world, saying, “This is not the appropriate place for your child”, must be a very frustrating and lonely experience for those parents and we need to be able to provide a better approach to certainly document that pathway and that journey, which I think is one question, but also to be able to broker a solution as best we can for that family and to be able to engage with them at an appropriate level, providing the appropriate expertise, so that we can really guide them to the best solution.⁴³¹

- 4.25** Ms Suzanne Becker, Chief Executive Officer, Lifestart approached the enrolment issue as one which is affected by culture and attitudes, stating:

What we want to see is consistency in how schools engage with families at the entry point into the education pathway and as they transition through. It would be fantastic to hear that all families and students when they first approach the education system get to hear, “What can we do for you?” Rather than what we cannot.⁴³²

Access to specialised settings

- 4.26** Specialised educational settings are offered by both the government and non-government sector. While evidence was received regarding the non-government sector, this section will primarily examine the barriers to gaining placement in government settings.

- 4.27** As outlined in Chapter 1, in government schools, ‘students who meet the department’s disability criteria’,⁴³³ may attend support classes or units within mainstream schools, Schools for Specific Purposes or other specialised educational settings.

⁴²⁹ Evidence, Ms Ruth Callaghan, General Manager Stakeholder Relations, Northcott, 3 April 2017, p 49.

⁴³⁰ Evidence, Mr Dizdar, 23 June 2017 p 61.

⁴³¹ Evidence, Mr Scott, 23 June 2017, p 61.

⁴³² Evidence, Ms Becker, 3 April 2017, p 59.

⁴³³ Submission 135, NSW Government, p 10.

- 4.28** Enrolment in any of these specialised educational settings is managed through an additional placement application process via the Access Request system of a student's designated local school. The Access Request system and related processes are discussed later in this chapter.
- 4.29** Similar to the issues raised in evidence regarding mainstream enrolment, lack of parental choice in determining enrolment in a specialised setting was of continued concern, one parent stated, '... I was not free to choose where he could go. I just had to apply to my local school in our area, and they would put in an application for it. That was denied.'⁴³⁴
- 4.30** Underpinning concerns raised regarding lack of choice was the availability of suitable places in specialised settings. The committee heard that placements were not offered to students who either did not meet the eligibility criteria, or for whom no placement was available.⁴³⁵ With regard to the latter, Ms Clements, NSW Department of Education advised that for students who met the criteria reapplication was not necessary and a student 'may well be considered for a placement when it does become available.'⁴³⁶
- 4.31** While some inquiry participants expressed the view that 'in many cases' students were able to access a place in a local specialised setting in a timely manner,⁴³⁷ a substantial amount of evidence received by the committee from parents and schools raised concerns over the shortage of vacancies, with one parent likening obtaining a place in a specialised setting as 'winning the lottery if your child gets into one of these supported classroom environments. They are just so rare.'⁴³⁸
- 4.32** Ms Wilkins, Acting Head Teacher, Personalised Learning, Rooty Hill High School, argued that mainstream schools try their best to support students, but '[w]hen we have tried everything, we need to get a placement for those children', adding that under the current system '[i]t is only the most severe of those who are going to win that sacred placement because there are not enough places available.'⁴³⁹
- 4.33** Mr Kotlash, Assistant Principal, Sanctuary Point Public School, Special Education Needs Support Unit, advised of his understanding of the shortage experienced at Vincentia High School, which, despite having the largest number of support classes in a mainstream setting in New South Wales,⁴⁴⁰ continues to have a number of students waiting for placement:

Vincentia High School has 57 students out of their 1,200 who are in mainstream classes who have a diagnosed disability and who suit the access criteria for special education placement, but they do not have any places. They are always full. They have a big need for more classes but that need is not being met currently, even though they

⁴³⁴ Evidence, Ms McLellan, 8 May 2017, p 16.

⁴³⁵ For example, Ms Cheryl McBride, Principal, Smithfield Public School, 23 June 2017, p 41; Ms Margaret Wilkins, Acting Head Teacher, Personalised Learning, Rooty Hill High School, 23 June 2017, p 49 and 51.

⁴³⁶ Evidence, Ms Clements, 27 March 2017, p 15.

⁴³⁷ Evidence, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Principals' Association, 27 March 2017, p 37.

⁴³⁸ Evidence, Ms Alex Baltins, Member, Children and Young People with Disability Australia, 3 April 2017, p 54.

⁴³⁹ Evidence, Ms Wilkins, 23 June 2017, p 51.

⁴⁴⁰ Answers to questions on notice, NSW Teachers Federation, 8 May 2017, p 9.

have that information that says that we have got these extra students who would benefit from being in a class. Last year we were in the unpleasant situation of having students who were in special education classes for the duration of their school life moving to high school and moving into a mainstream environment. That is a fairly difficult ask for those students and it has not necessarily gone well because the high school does not have that support. They offer an extra two classes that they fund out of their own funds to try to meet that need in years 7 and 8. It is a transition class for students who have difficulties accessing the mainstream curriculum with the number of rooms they need to travel to and the number of teachers they need to interact with. That is paid out of school funds. But the rest of those 57 students are waiting for support class placements.⁴⁴¹

4.34 In response to questions concerning support class vacancies, the Department advised that each operational area is responsible for planning and establishing support classes, and that ‘data is not available at a state level’ regarding the ‘numbers of students being considered for specialist support class[es].’⁴⁴² Ms Clements explained the process is responsive to need, stating: ‘Typically, the application process relates to placements in the following year ... The establishment of classes each year is based on demand. It is a planned process involving looking at the demand and the data for each year to establish the classes’⁴⁴³, adding that ‘if there is a greater demand through panels later in the year, additional classes can be established.’⁴⁴⁴

4.35 Regarding vacancies in Schools for Specific Purposes (SSPs), the Department advised that ‘[a]s at 23 June 2017, there were 533 vacancies in SSPs across NSW.’⁴⁴⁵

4.36 The NSW Government advised that more classes would be available in 2017:

As a result of the planning process in 2016, an additional 124 specialist support classes have been established for 2017 in response to the increasing total student population in NSW government schools (more than 70,000 additional students since 2012). These classes will provide more than 850 additional support class places for students with disability.⁴⁴⁶

4.37 Ms Clements was of the view that the difficulty for the Department and its operational areas was not in the number of vacancies but in vacancy management and matching students with suitable vacancies:

One of the challenges we have with a support class is identifying where there is a suitable vacancy that will be able to accommodate the student. It is one of our biggest ongoing challenges where there is a demand. It is about matching the students who are seeking a placement with the vacancies.⁴⁴⁷

⁴⁴¹ Evidence, Mr John Kotlash, Teacher, 19 May 2017, pp 8-9.

⁴⁴² Answers to questions on notice, NSW Department of Education, 26 July 2017, p 3.

⁴⁴³ Evidence, Ms Clements, 27 March 2017, pp 14-15.

⁴⁴⁴ Evidence, Ms Clements, 23 June 2017, p 58.

⁴⁴⁵ Answers to questions on notice, NSW Department of Education, 26 July 2017, p 1.

⁴⁴⁶ Submission 135, NSW Government, p 16.

⁴⁴⁷ Evidence, Ms Clements, 27 March 2017, p 14.

4.38 Indeed evidence received by the committee indicated that a lack of places resulted in a ‘triage system’ where students were prioritised according to need by regional services. In discussing his experiences on regional placement panels Mr Johnson, Principal Glenvale School, provided the committee with some insight into how placement panels make determinations regarding offers to students according to need and vacancies:

[A] regional placement panel— it has various different forms across the State but the same intent. It is about being able to prioritise the students to be able to find the most appropriate placement for that student, depending on their need, and then, depending on vacancies, those students would move through.⁴⁴⁸

4.39 While acknowledging delays occurred and in the absence of vacancies student placement may be held over in a ‘cycle of waiting between panels’, Mr Johnson stated that regional panels are meeting more frequently than in the past and that ‘in view of all of the applications that come in, I have never seen in my career in special education students who have been pushed for a year’, adding ‘I have never seen someone miss out on a service but they might not have got a first preference.’⁴⁴⁹

4.40 Schools expressed great concern over the length of time students are waiting for placement and questioned a process which raised the expectations of parents who do not know they are applying for places which do not exist, with one teacher commenting:

We are waiting months and months for these kids to be placed. Often we are filling out access requests when they know already there is no placement, so why do they make us do that? You know, that is crazy. Then I have a family at the other end thinking that this might bring some sort of result for a child, and there was no placement available when I tendered that report.⁴⁵⁰

4.41 Where no placement is available or when placement is delayed the committee heard that ‘responsibility then comes onto the school that might not have the adequate resources to appropriately support the student’.⁴⁵¹ Schools raised concerns about their capacity to support students during this time due to the inadequacy of interim arrangements at mainstream schools while students wait for placement. Ms McBride, Principal, Smithfield Public School, advised that ‘we cannot guarantee the safety of those children, nor can we guarantee that we can provide them the curriculum access that they need, because we do not have the same level of resourcing, support or even safe infrastructure for those children.’⁴⁵²

4.42 Distance, and the practicalities of travel for students with disability, was an additional barrier raised by stakeholders, who argued that a lack of local specialised settings either limited access to appropriate education for students with disability, or resulted in students traveling unreasonable distances in order to attend school.⁴⁵³ The Assisted Travel Program which

⁴⁴⁸ Evidence, Mr Matthew Johnson, Principal, Glenvale School, 8 May 2017, pp 34-35.

⁴⁴⁹ Evidence, Mr Johnson, 8 May 2017, pp 37-38.

⁴⁵⁰ Evidence, Ms Jan Pennisi, Teacher, 8 May 2017, p 8.

⁴⁵¹ Evidence, Mr Jack Galvin Waight, Teacher, 8 May 2017, p 8.

⁴⁵² Evidence, Ms McBride, 23 June 2017, p 40.

⁴⁵³ For example, Evidence, Ms Bitia Christos, Deputy Principal Support, Smithfield Public School, 23 June 2017, p 49; Evidence, Ms Sheryl Bruffey, Principal, Budawang School, 19 May 2017, p 27; Evidence, Dr Sowden, 3 April 2017, p 34.

provides travel support for eligible students with disability is discussed at the end of this chapter.

- 4.43** Evidence received by the committee indicated that demand also exceeded capacity in the non-government sector. In response to questions Autism Spectrum Australia confirmed that across Aspect's nine autism schools they had a wait list which was approximately 30 per cent of their enrolment. However, Ms Perritt, Deputy National Director, Aspect Education, Autism Spectrum Australia, advised that with regard to one school 'our waiting list has always been around the 200-client level... for 175 spots in the school'.⁴⁵⁴
- 4.44** Similarly, Mr Fitzgerald, CEO and Principal, Mater Dei Catholic School, one of twelve Catholic schools for students with special needs, advised that Mater Dei is at full capacity: 'We would receive anything between 30 and 40 applications a year. We would generally have about 10 to 15 positions... We take students on the basis of our capacity to best meet their needs.'⁴⁵⁵
- 4.45** The Royal Institute for Deaf and Blind Children stressed the importance of ensuring students with disabilities have access to the most appropriate educational setting, Mr Cavalletto, Director, Services, stated:

Children with disabilities do not have the same range of schooling options available to them. It makes it critical that they have access to schools that best match their individual needs and optimise their outcomes and their potential on the same basis as their peers. Access to the right school should not be impacted by arbitrary restrictions such as travel limits imposed by assisted school travel programs that prevent that access and, in fact, limit the choice of control of parents and their children and impact outcomes.⁴⁵⁶

Committee comment

- 4.46** The committee acknowledges that parents of students with disabilities and special needs experience barriers to enrolment in all sectors. We note that these parents are not always adequately supported by the Department in finding the best educational setting for their child. In Chapter 6 the committee has recommended that the Department establish a case manager role to support parents in all aspects of the education system, including at the enrolment stage. It is hoped that this may assist parents in overcoming the barriers to enrolment and broker solutions that can reconcile parental choice and school advice.
- 4.47** The committee is concerned that educational advice does not always support the model of inclusion adopted by the Department which may therefore not meet the legal obligations of schools to students with disabilities and special needs.
- 4.48** The committee notes that, while changes have occurred to the placement application process and there has been a growth in support classes, it appears that the current regional planning

⁴⁵⁴ Evidence, Ms Rowena Perritt, Deputy National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 71.

⁴⁵⁵ Evidence, Mr Tony Fitzgerald, CEO and Principal, Mater Dei Catholic School, 27 March 2017, p 61 and Submission 133, Catholic Education Commission of NSW, p 6.

⁴⁵⁶ Evidence, Mr Bart Cavalletto, Director, Services, Royal Institute for Deaf and Blind Children, 23 June 2017, p 2.

process for the management and establishment of support classes does not adequately respond to need and inhibits access to local specialised support settings for students with disabilities and special needs.

- 4.49** The committee urges the Department to improve oversight of the planning and establishment of support classes in mainstream schools. Moreover, the committee recommends that the NSW Government increase support classes to adequately meet student need. The lack of adequate or reliable data is a barrier to determining the scale of the problem faced by parents and difficulties parents have in enrolling their children in the school of their choice.

Recommendation 10

That the NSW Department of Education increase support classes in mainstream schools to adequately meet student need.

Recommendation 11

That the NSW Department of Education require reporting and data collection on all children with special needs who have sought enrolment in a school or support class and not obtained that enrolment.

Recommendation 12

That the NSW Department of Education create a public dashboard that provides:

- twice yearly updated data on the number of students enrolled in Schools for Specific Purposes and support classes
- data on students not enrolled but seeking enrolment in Schools for Specific Purposes and support classes and on waiting lists for enrolment in these settings
- this data on a regional basis.

Recommendation 13

That the NSW Department of Education implement a system for gathering data about the school setting for students with a disability from each school district, with tracking that monitors the numbers who attend special and mainstream settings.

Access to support

- 4.50** In a recent performance audit, the New South Wales Auditor-General found that ‘the Department has put considerable effort into improving support for students with disability’ and ‘while some schools support students with disability well, others have more to do before they adequately meet students’ needs’.⁴⁵⁷

⁴⁵⁷ New South Wales Auditor-General, *Performance Audit report, Supporting students with disability in NSW public schools: Department of Education*, May 2016, p 2.

- 4.51** All stakeholders expressed the view that with the right support students with disabilities and special needs can participate and achieve academically. Indeed the introduction of Every Student, Every School initiative and the Resource Allocation Model for funding reflects the change in the fundamental approach to the provision of support for all students as inclusive and individualised.⁴⁵⁸
- 4.52** The type of support required by students with disability is wide ranging, effects all aspects of schooling and can include additional or personalised teaching support, access to intervention programs, curriculum differentiation, or adjustments to the built school environment, classroom equipment or examination practices.
- 4.53** The underlying concern of all stakeholders, focused on the adequacy of support, differentiation and adjustments to facilitate participation and learning and enable students to demonstrate their knowledge on the same basis as their peers, which is contingent on adequate levels of funding and resources. As funding arrangements have been discussed in Chapter 3, this section will give a broad overview of the key issues raised throughout the inquiry regarding the provision of support to students with disabilities and special needs.
- 4.54** The key themes regarding the provision of teaching supports to students raised during this inquiry focused on the impact of School Learning Support Teams in mainstream schools, on identifying need and developing individual education plans, Access Request processes, the adequacy of support available at Schools for Specific Purposes and access to alternative educational settings. Differentiated learning, access to the curriculum, evidence-based practices and programs, and adjustments were also a concern for stakeholders.

School Learning and Support Teams

- 4.55** As discussed in Chapter 5, the greatest change in the provision of teaching support in government schools since the 2010 Upper House inquiry was the School Learning and Support Teams introduced under the Every Student, Every School initiative, which reorganised existing regional Itinerant Support teacher positions and relocated new School Learning and Support Teams, consisting of Learning and Support Teachers (LAST) and School Learning Support Officers (SLSO, teacher's aide), directly into schools.
- 4.56** The NSW Government outlined the diverse support role of learning and support teachers and teams, from identifying student need and providing individual students with additional support through to consulting with stakeholders and assisting with school planning:

School learning and support teams play a key role in planning how school resources, including funding, are used and how best to meet the specific learning and support needs of students. School learning and support teams work in consultation with parents and carers to ensure the best possible outcomes for students.⁴⁵⁹

⁴⁵⁸ Submission 135, NSW Government, p 4.

⁴⁵⁹ Submission 135, NSW Government, p. 8.

- 4.57** Schools and teachers similarly expressed support for School Learning and Support Teams as ‘one of the wins out of the ESES model’.⁴⁶⁰ Mr Chris Presland, President, NSW Secondary Principals’ Council, stated that he did ‘not know how a school would cope without one’.⁴⁶¹
- 4.58** Evidence received from specialist teachers discussed the benefits that School Learning and Support Teams have for schools and students, including improving ‘the understanding of mainstream teachers to make adjustments and accommodations for students with disabilities in their classes’,⁴⁶² supporting teachers to change their ‘whole class mindset’⁴⁶³ to include individualised learning, and to facilitate inclusive practices in schools by ensuring ‘a student will have every resource, every welfare program, every behaviour support’ before seeking enrolment in a specialist setting.⁴⁶⁴
- 4.59** While many stakeholders supported the introduction of School Learning Support Teams, teachers and parents raised concerns over the ‘variable’ efficacy of the teams, the complete removal of regional support, and the type of support provided to students.⁴⁶⁵
- 4.60** Mr Presland stated that while access to additional support has improved, School Learning Support Teams struggle to meet the high demand from students, particularly, where the need is complex:
- ESES funding for schools has facilitated improved access to additional support within schools ... However, the immediacy of the support can be inhibited by the increased number of students being referred to the school learning and support team and/or the development of appropriate individual education and support programs. The greater challenges relate to students who require more intensive or specialist support. Much of the coordination of support rests with the schools’ learning and support teams⁴⁶⁶
- 4.61** Some inquiry participants questioned the experience and qualifications within School Learning Support Teams to provide adequate support to teachers and students and argued that given the lack of skills of some teachers and staff, the removal of regional supports has negatively impacted on a schools capacity to provide appropriate levels of support to teachers and students.⁴⁶⁷
- 4.62** Chapter 5 discusses the issue of the use and provision of School Learning and Support Officers (SLSOs) to support students with disabilities and special needs with some inquiry participants expressing the view that with good practices and correct oversight, SLSOs can

⁴⁶⁰ Evidence, Ms Pennisi, Teacher, 8 May 2017, p 11.

⁴⁶¹ Evidence, Mr Chris Presland, President, NSW Secondary Principals’ Council, 27 March 2017, p 53.

⁴⁶² Evidence, Ms Robyn Christofides, Teacher, 19 May 2017, p 8.

⁴⁶³ Evidence, Ms Allison Gentle, Teacher, 23 June 2017, p 35.

⁴⁶⁴ Evidence, Mr Johnson, 8 May 2017, p 38.

⁴⁶⁵ Evidence, Ms Claudia Vera, Organiser, NSW Teachers Federation, 3 April 2017, p 5; See also, Evidence, Mrs Julie Hermansen, Parent, 8 June 2017, p 18; Evidence, Ms Lee Duncan, Parent, 8 June 2017, p 13.

⁴⁶⁶ Evidence, Mr Presland, 27 March 2017, p 38.

⁴⁶⁷ For example, Submission 80, Name suppressed, p 1; Submission 109, Ms Kathryn Deacon, p 2; Submission 155, NSW Primary Principals’ Association, p 7; Submission 383, Name suppressed, p 2.

make a valuable contribution to assist schools meet the needs of students⁴⁶⁸ while others arguing they were not teachers and offered little more than a ‘babysitting’ service.⁴⁶⁹

- 4.63** Stakeholders stated that in some instances the nature of support provided to teachers and students was not adequate to meet the specific needs of students and schools were unable or unwilling to consult on the type of support offered by School Learning Support Teams.
- 4.64** For example, while the NSW Government stated that Itinerant Support Teachers with expertise in hearing and vision were retained under ESES,⁴⁷⁰ inquiry participants indicated that some schools were attempting to hire experienced Auslan interpreters under the lesser wage of an SLSO with the expectation that they would also ‘fill the role of an SLSO while trying to translate and interpret’ or hiring unqualified or inexperienced interpreters who are unable to provide adequate support or facilitate access to lessons appropriately.⁴⁷¹
- 4.65** Mr Bart Cavalletto, Director, Services, Royal Institute for Deaf and Blind Children, argued that deaf students may face further barriers to accessing inclusive education due to the use of ‘generalist specialist teachers’ who were ‘unlikely to have the fluency and the range of skills around delivering services in Auslan’ to adequately support students, stating ‘[t]here is a very big difference between having a teacher with you in a classroom delivering your curriculum in Auslan or an interpreter trying to interpret what a teacher is trying to portray.’⁴⁷²
- 4.66** Stakeholders questioned if the balance was always right between the provision of support to teachers versus the provision of support directly to students.
- 4.67** Ms Carolynne Merchant, Director, Public Schools NSW, Southern Tablelands Network, NSW Department of Education, stated that schools need to use funding ‘flexibly’ in order to balance unseen supports and the need to build the capacity of teachers which results in improved student outcomes, and the expectations of parents regarding SLSOs, stating ‘[p]arents often see the SLSO person as being the be-all and end-all of everything but those students deserve the expertise of a teacher as well, so an SLSO might be off doing something else to allow that teacher to work with those students.’⁴⁷³
- 4.68** Ms Allison Gentle, teacher, acknowledged the importance of improving teacher quality, but expressed concern that within the current system, prioritising teacher development comes at the expense of extra instruction for students:

The school I am at at the moment has used the Gonski funding they have so far to provide extra release for executive grade supervisors, which on the face of it is a good thing to do; it frees them up to have time to work with their team and up-skill the teachers on their team.

⁴⁶⁸ Evidence, Ms Pennisi, 8 May 2017, p 5.

⁴⁶⁹ Evidence, Dr Melanie Heyworth, Parent, 27 March 2017, p 27.

⁴⁷⁰ Answers to questions on notice, NSW Department of Education, 14 June 2017, p 8.

⁴⁷¹ Evidence, Ms Suzanne Robertson, Parent, 8 May 2017, pp 13 and 19.

⁴⁷² Evidence, Mr Cavalletto, 23 June 2017, p 4.

⁴⁷³ Evidence, Ms Carolynne Merchant, Director Public Schools NSW, Southern Tablelands Network, NSW Department of Education, 19 May 2017, p 44.

In terms of how much of that benefit will flow through to the students who need extra instruction, not much. Whatever the grade supervisor knows about differentiation, she has more time to pass on to her team. But in terms of actually getting that child in front of someone who knows how to teach them and knows what they need and knows how to deliver what they need, that is not happening at my school at least. And there is nothing to stop that happening in any other school.⁴⁷⁴

- 4.69** Witness C, raised concerns that funding was too flexible and allowed schools complete discretion to spend funds on anything, to the detriment particularly of students who received targeted funding to support their needs:

We have numerous children at our school with quite a few disabilities and there are quite a few aids, school learning support officers, that work within our school. A lot of the students have got the funding for their disabilities but I am finding that a lot of the aids that might be employed to assist the teacher to assist the child are not actually spending time in the classroom with that teacher to help the child ... the funding is not for the child, the funding is for the teacher, so it is up to the teacher how the funding is used, but what I see from my school is that aids, the school learning support officers [SLSOS], are not assisting the teacher to help the child.⁴⁷⁵

Committee comment

- 4.70** The committee commends the introduction of School Learning Support Teams, as supported in recommendations of the 2010 Upper House inquiry. However, we acknowledge the concerns of inquiry participants that these teams may not be adequately resourced or staffed to effectively improve or provide support to all students. These teams have such a key role in the ESES initiative that to not provide them with adequate resources could jeopardise the positive impact these teams can have on supporting students with disabilities and special needs, their teachers and the school.

Recommendation 14

That the NSW Department of Education ensure that School Learning and Support Teams are adequately trained, resourced, staffed and remunerated to provide support to students, teachers and their schools.

Individual education plans

- 4.71** One of the key roles of School Learning Support Teams is to support teachers to identify and 'plan, implement, model and evaluate personalised adjustments for learning where required with classroom teachers, students and/or parents or carers'.⁴⁷⁶ School Learning and Support Teams facilitate the development of individual education plans (IEPs), and are the point of

⁴⁷⁴ Evidence, Ms Gentle, 23 June 2017, p 35.

⁴⁷⁵ *In camera* evidence, Witness C, 19 May 2017, p 4, published by resolution of the committee.

⁴⁷⁶ Submission 135, NSW Government, p 8.

contact ‘for advice or support for an individual student’ by all stakeholders, ‘parents, schools, other government departments and agencies’.⁴⁷⁷

- 4.72** IEPs are a structured way in which schools, in consultation with parents, specialist support services, and students themselves, can identify, plan, monitor and measure a student’s academic goals and achievements, ensuring that appropriate supports are provided to meet student need in a proactive, consultative and accountable way.
- 4.73** Mr Harris, NSW Department of Education, advised that ‘quality personalised learning support plans developed in consultation with the parents’ ensure there is ‘clear communication around where the child is at, what the child is learning needs are and what the school is doing in partnership with the parent’ enabling schools and the Department to measure the impact the support provided by schools is having on student learning.⁴⁷⁸
- 4.74** Indeed there was widespread support for the use of IEPs. Stakeholders across all education sectors commented on their importance to ensuring a personalised, responsive, and collaborative approach is taken to education planning and programs.⁴⁷⁹ Ms Barbara Leiton, Member, NSW Independent Education Union, commented:

We regard the individual education plan as being paramount to meeting the needs of the child, so we often meet with teachers, we collaborate and we meet with parents. We provide further opportunities to evaluate the individual education plan as well. ... It is a very time-consuming process but it does mean that everybody, including the parents, have a say in goals for the child and what adjustments are going to be put in place in order to achieve it.⁴⁸⁰

- 4.75** Schools and disability service providers expressed the benefits of IEPs for a broad range of students, not just those with a formal disability diagnosis or those in specialised settings, as IEPs could be used to facilitate collaboration between agencies, and assist with the early identification of need and improve the timeliness of the provision of support.⁴⁸¹ For example, Rooty Hill High School, a large mainstream high school in Western Sydney, advised that they have adopted a whole-of-school approach to IEPs, as demonstrated in the case study below.

⁴⁷⁷ Evidence, Dr Lyn Gardon, Relieving Director School Services, NSW Department of Education, 8 June 2017, p 25.

⁴⁷⁸ Evidence, Mr Harris, 8 May 2017, p 44.

⁴⁷⁹ For example, Submission 161, National Disability Services, p 9; Evidence, Ms Edwina Turner, Principal, The Crescent School, 19 May 2017, p 25; Evidence, Ms Katrina Eyland, Principal, Havenlee School, 19 May 2017, p 25; Evidence, Ms Catherine Lucas, Teacher, and Ms Wilkins, Rooty Hill High School, 23 June 2017, p 52; Evidence.

⁴⁸⁰ Evidence, Ms Barbara Leiton, Member, NSW Independent Education Union, 3 April 2017, p 17.

⁴⁸¹ For example, Evidence, Ms Sarah Rudling, Principal, Barrack Heights Public School, 19 May 2017, p 26; Evidence, Ms Kate Finch, Manager, Systemic Advocacy, People with Disability Australia, 3 April 2017, p 41.

Case study: Whole of school approach to IEPs by Rooty Hill High School

Rooty Hill High School is a comprehensive, fully mainstream high school catering for 1,150 students ... 41 per cent of our students have adjustments made because they experience some sort of disability. In order to give the students of our community fair and equitable access to quality education, we have adopted a whole-school personalised learning approach. This means that all students have a personalised learning plan which includes their strengths, goals and achievements. All students in the school have access to this process. These plans are co-constructed by the student and a member of staff and are reviewed twice a year.

Over a recent cycle, over two weeks, 75 per cent of the student body was interviewed. This cost the school 91 teaching days and 34 School Learning Support Officer [SLSO] days. The personalised learning plans are universal and benefit all students in the school. We have seen an improvement in school attendance retention rates and, ultimately, HSC results. For those students with additional needs—not just those who are narrowly defined as having a physical or intellectual disability—all of those who are considered at risk, including those with physical and mental health issues, as well as those in out-of-home care, those with learning disabilities, those who are socially isolated and those experiencing trauma including violence or serious parental illness, more targeted and intensive support is available, whether that be a health plan for students with health struggles, a risk management plan for those students with behavioural difficulties or an individual learning plan for students with more intense learning needs.

...It is a 15 to 20 minute interview twice a year...It is to set goals. We get them to look at their behaviour and how it affects their marks ... and we try to get them to make that connection and to make their own goals for how they could improve that.⁴⁸²

4.76 However, despite the value of IEPs, the committee received evidence that collaborative individual or personalised planning ‘does not always happen; in fact there are many times when it does not happen’, with stakeholders raising concerns over the discretionary nature of IEP use, lack of consultation with parents and specialist support services, and the variable quality of IEPs.⁴⁸³

4.77 Parents and disability advocates recounted difficulties in getting schools to agree to educational plans, even for students with a formal diagnosis. For example, Dr Heyworth, parent, stated:

We asked for our son to have an individual education plan [IEP] written for him after he was diagnosed and to have people from the learning support team included in his IEP, in writing and implementing it, and we were told that he did not need it. ⁴⁸⁴

4.78 Disability services and advocates raised concern over the lack of meaningful consultation during the development of IEP’s, noting that in their understanding ‘Every Student, Every School had parental involvement in educational planning as a guiding principle’ but that was

⁴⁸² Evidence, Ms Lucas, and Ms Wilkins, 23 June 2017, pp 41-42 and 52.

⁴⁸³ Evidence, Ms Meg Clement-Couzner, Senior Systemic Advocate, Family Advocacy, 3 April 2017, p 67. See also Submission 3, Dyslexia Support NSW Mid North Coast, p 18; Submission 17, Epilepsy Action Australia, p 10; Submission 129, UNSW Sydney Special and Inclusive Education Group, p 3; Submission 159, Children and Young People with Disability Australia, pp 19-20.

⁴⁸⁴ Evidence, Dr Heyworth, 27 March 2017, p 30.

inconsistently followed by schools.⁴⁸⁵ Ms Suzanne Becker, Chief Executive Officer, Lifestart, explained:

[O]ften we are seeing that families are not communicated with when decisions are being made about the educational outcomes for their child. We will often hear reports where a family will find out 12 months down the track, for example, that an individual education program has been written for their child but nobody thought to actually consult with them about what their goals were for that child.⁴⁸⁶

4.79 Ms Jessica Lobo, Senior Sector Development Officer, National Disability Services expressed the opinion that ‘due to a resistance and lack of knowledge around disability’, ‘teachers have been resistant to listening to the advice of disability experts and even ignoring the advice they have for input into the education plans’.⁴⁸⁷

4.80 The variability of education plans across schools and settings, was acknowledged by Assistant Principal and special education teacher, Ms Megan McQueen, who stated:

I have looked at other individual learning plans at other schools in other settings. They do differ from school to school, as do teacher programs from school to school. It is an expectation of our school that our teachers do develop quite comprehensive individual learning plans for our students that address all their needs, from their academic needs to their medical or behavioural needs. That is an expectation that is placed on us in that school. I think, like any organisation, the quality of the paperwork differs ... I know we are a specialised setting, we are a special school, but I think the same expectations should be placed on everyone, no matter where the environment is.⁴⁸⁸

Committee comment

4.81 The committee notes the recommendations of the 2010 Upper House inquiry regarding individual education plans and acknowledges that similar issues were raised again during this inquiry regarding the discretionary use of IEPs, their variable quality and the lack of consultation with parents and specialist support services.

4.82 The committee believes that there is a strong case for requiring all students with disabilities and special needs to have a comprehensive IEP. The committee makes recommendations to this effect including ensuring the adequacy of resources to support the development and implementation of IEPs and encourages the non-government sector to take a similar approach.

⁴⁸⁵ For example, Evidence, Ms Clement-Couzner, 3 April 2017, p 67; Evidence, Mr Roy, 27 March 2017, p 30.

⁴⁸⁶ Evidence, Ms Becker, 3 April 2017, p 59.

⁴⁸⁷ Evidence, Ms Jessica Lobo, Senior Sector Development Officer, National Disability Services, 3 April 2017, p 75.

⁴⁸⁸ Evidence, Ms Megan McQueen, Assistant Principal and Teacher, 8 June 2017, p 7.

Recommendation 15

That the NSW Department of Education ensure that Individual Education Plans are developed and implemented:

- as a mandatory requirement for all students with disabilities and special needs
- with the support of adequate funding and resources.

Recommendation 16

That the NSW Department of Education include, in the dashboard referred to in Recommendation 12, data on the proportion of students with disabilities and special needs who have Individual Education Plans.

Evidence-based practices and programs

- 4.83** During the inquiry stakeholders stressed the importance of identifying need and intervening as early as possible with appropriate evidence-based programs to deliver the curriculum and evidence-based practices when making adjustments or responding to challenging behaviour, in order to ensure students with disabilities and special needs are treated fairly, achieve academically, and maintain good health and wellbeing throughout their schooling.⁴⁸⁹
- 4.84** Indeed, support for evidenced-based practices was expressed by Mr Scott, NSW Department of Education, who likened the expectations of the Department to those in the medical sector, advising:
- ... what we want to try to do in the mindset that we have around schools is to have directors and principals working together with a shared commitment to lift educational outcomes and to lift the performance of every student. ... I am drawing more parallels to medicine quite frankly. If in fact the medical evidence comes in that a certain practice is dated or antiquated or not delivering the outcomes, but there is a new improved medical intervention, you expect medical practitioners to move to that, so that should be in our schools.⁴⁹⁰
- 4.85** Ms Barbara Leiton, Member, NSW Independent Education Union, also discussed the importance and benefits of ‘good early intervention’ and the role teachers and schools have in implementing evidence-based programs and practices. Ms Leiton stated that ‘interventions are complex’, and argued that without adequately trained teachers and support staff, students are effectively ‘babysat’ or receive ‘bandaid fixes’ which ‘are not looking at the long-term benefits for the child.’⁴⁹¹
- 4.86** Concerns were raised by stakeholders, across all sectors and settings, that some schools are offering or recommending programs and following practices that are not always based in

⁴⁸⁹ For example, Submission 23, Association of Independent Schools of New South Wales, p 17; Submission 111, Macquarie University Special Education Academics, p 2; NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p iii.

⁴⁹⁰ Evidence, Mr Scott, 23 June 2017, p 75.

⁴⁹¹ Evidence, Ms Leiton, 3 April 2017, p 14.

evidence which can detract from the capacity of students to reach their potential, and in more serious cases could amount to student harm.⁴⁹²

Behaviour management practices

4.87 Serious concerns were raised during the inquiry which questioned behaviour management strategies and incident response practices and procedures, particularly the ‘scrutiny and aspirations of the department around use of restrictive and exclusionary practices’ which should be a ‘last resort’ only,⁴⁹³ and harm caused to students when ‘practices like restraint and seclusion, which are not evidence based, and teaching modifications that are not evidence based’ are used.⁴⁹⁴

4.88 The NSW Ombudsman inquiry into behaviour management in schools found that policy, practice and oversight could be more rigorous in order to better reflect accepted practices in the wider disability area, and for the State to be confident that their ‘practices are lawful’⁴⁹⁵:

Across government and non-government schools, there is a need to ensure that clear guidance is provided to staff and the school community about the use of time-out rooms, and to distinguish between seclusion and the use of safe spaces/voluntary withdrawal. Greater guidance is required on the use of restrictive practices, including seclusion and restraint. There is also a need for greater rigour in the actions that are required in response to critical events involving restrictive practices, including reporting and related monitoring arrangements.⁴⁹⁶

4.89 Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, advised that while the ‘potential effectiveness’ of the NSW Department of Education Positive Behaviour for Learning program ‘is not in doubt’, the success of the program is contingent on an effective rollout with ‘good systems and good technical support’, noting that only ‘50 per cent of schools have the program in place’.⁴⁹⁷

Committee comment

4.90 The committee endorses the NSW Ombudsman’s findings. The committee calls on the NSW Government to urgently implement the Ombudsman’s proposals in its Inquiry into behaviour management in schools.

⁴⁹² For example, Dr Sue O’Neill, Lecturer in Special Education, School of Education, University of New South Wales, 3 April 2017, pp 21-22; Evidence, Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, 3 April 2017, p 55.

⁴⁹³ Evidence, Ms Kim Bulkeley, Industry Advisor: Education and Disability, Occupational Therapy Australia, 19 May 2017, p 22.

⁴⁹⁴ Evidence, Ms Gotlib, 3 April 2017, p 55.

⁴⁹⁵ Evidence, Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, 11 August 2017, p 2.

⁴⁹⁶ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p ix.

⁴⁹⁷ Evidence, Mr Kinmond, 11 August 2017 pp 2-3.

Recommendation 17

That the NSW Government urgently implement the NSW Ombudsman's proposals in its Inquiry into behaviour management in schools.

Literacy programs

- 4.91** Evidence was received from stakeholders which questioned the lack of accreditation and oversight, efficacy, empirical scrutiny and cost-effectiveness of some intervention programs to support students with disabilities and special needs. In particular programs delivered by schools such as Reading Recovery, L3 and L2, and the Arrowsmith program were discussed by inquiry participants.⁴⁹⁸
- 4.92** Mr Baker, Catholic Education Commission NSW noted that 'there is no system—state or national—for accrediting interventions', suggesting that regulation of educational programs might be of benefit provided it did not detract from school-based education funding.⁴⁹⁹
- 4.93** One area of key concern for inquiry participants and stakeholders was the efficacy of literacy programs offered across all sectors and available to students in the private market. Dr Sally Howell, Principal of the MUSEC School, Department of Educational Studies, Macquarie University, was 'astounded', 'that programs which have no sound research evidence base have been permitted to be rolled out in the capacity of supporting' students with disability.⁵⁰⁰
- 4.94** Dr Howell, questioned the \$500 million investment by the NSW Department of Education through the Early Action for Success program which provides literacy support to students, as it is based on principles which do not 'include systemic and explicit instruction in phonics', describing the missed opportunity for support through evidenced-based programs during the 'vital years of early instruction' as a 'tragedy'.⁵⁰¹
- 4.95** Stakeholders argued that there was a critical need to ensure literacy programs provided intervention which was proven to develop students capacity to read, not just memorise known words and texts,⁵⁰² and early screening where disability was identified.⁵⁰³

⁴⁹⁸ For example, Submission 111, Macquarie University Special Education Academics, p 5; Submission 135, Specific Learning Difficulties Association of (SPELD) NSW, p 8; Evidence, Dr Therese Cumming, Associate Professor in Special Education, School of Education, University of New South Wales, 3 April 2017, p 23; Tabled document, SPELD NSW, *Position Statement: Selecting a successful intervention program*, p 1.

⁴⁹⁹ Evidence, Mr Baker, 27 March 2017, p 67.

⁵⁰⁰ Evidence, Dr Sally Howell, Principal of the MUSEC School, Department of Educational Studies, Macquarie University, 3 April 2017, p 22.

⁵⁰¹ Evidence, Dr Howell, 3 April 2017, pp 26.

⁵⁰² For example, Evidence, Dr Kemp, 3 April 2017, p 23.

⁵⁰³ Evidence, Mrs Hermansen, 8 June 2017, p 16.

4.96 The committee heard of the compounding effect on a student's capacity to achieve academically when early intervention was not offered or failed. Ms Duncan, parent of a student with dyslexia, commented:

Until year 3 they are learning to read, and from year 3 onwards they are reading to learn. The kids who have missed that learning to read support in the early years are falling further behind. They have fallen off the back of the speedboat because the more you read, the more you can read. If you are stuck there, you cannot keep up.⁵⁰⁴

4.97 The inappropriateness of certain programs for students with autism or dyslexia was also discussed by some inquiry participants. Ms Duncan, parent of a student with dyslexia, advised that:

Anything that is based on guessing and recognising words, for dyslexic kids, is not going to work. For others they do have some success with reading recovery but it leaves a big lot of kids who are going to fail yet again if you are giving them a system that is not designed for their learning. That is asking them to fail again. There are only so many times you can fail before it becomes part of your self belief.⁵⁰⁵

4.98 The committee sought clarification as to the role of the NSW Educational Standard Authority (NESA) in determining the curriculum and overseeing literacy programs delivered by educational sectors.

4.99 Mr Paul Martin, Executive Director, Quality Teaching, and Mr Paul Hewitt, Executive Director, Learning Standards, of the NSW Education Standards Authority, advised that while 'New South Wales more than any other State or Territory prefaces the importance of phonics. It is very clearly embedded in the curriculum', 'schools and systems determine whether there are particular programs they want to put in place to deliver' the syllabus. Mr Martin discussed the historical debates surrounding Reading Recovery and its introduction, acknowledging that while recent research 'casts a doubt on its efficacy as a reading program', it is a 'contested space'.⁵⁰⁶

4.100 Mr Scott, NSW Department of Education, advised that Reading Recovery has been scrutinised by the Department, and referred the committee to a research report by the Department's Centre for Education Statistics and Evaluation (CESE) which 'suggests that its benefits are not universally applied to all children' and 'there is a question about how sustainable some of those benefits are over time'.⁵⁰⁷

4.101 Mr Scott stated that the Department provides advice and guidance regarding programs to schools in response to evidence and data, informing the committee that CESE is able to assess, evaluate and measure NAPLAN results over time which will enable the Department 'to provide more and more information to schools about precisely what works and what lifts standards and what lifts outcomes, including to a level of granularity around different programs and different interventions for students with learning difficulties'.⁵⁰⁸

⁵⁰⁴ Evidence, Ms Duncan, 8 June 2017, p 17.

⁵⁰⁵ Evidence, Ms Duncan, 8 June 2017, p 13.

⁵⁰⁶ Evidence, Mr Paul Martin, Executive Director, Quality Teaching, and Mr Paul Hewitt, Executive Director, Learning Standards, of the NSW Education Standards Authority, 23 June 2017, p 28.

⁵⁰⁷ Evidence, Mr Scott, 23 June 2017, p 73.

⁵⁰⁸ Evidence, Mr Scott, 23 June 2017, p 74.

- 4.102** Mr Scott further advised that the Department will provide a ‘final view’ regarding Reading Recovery later in 2017.⁵⁰⁹
- 4.103** The Catholic Education Commission NSW and the Association of Independent Schools of NSW, indicated that Catholic and independent schools have discretion over the programs they use to deliver the curriculum.⁵¹⁰ The committee heard that L3 is used in some non-government schools⁵¹¹ and some offer the Arrowsmith Program,⁵¹² which faced a similar critique as Reading Recovery by stakeholders.⁵¹³
- 4.104** Despite the evidence of Mr Scott concerning CESE and its capacity to provide advice based on evidence and research, academic stakeholders raised concerns that while the CESE is able to raise awareness it has no role in ‘dictating what is actually going to happen in schools’.⁵¹⁴ Dr Mark Carter, Associate Professor, Department of Educational Studies, Macquarie University, recommended re-establishing a ministerial special education advisory committee which can review the ‘evidence base for newly implemented programs’⁵¹⁵. A general standing committee between the Department, parents and external experts ‘in respect of examining systemic issues’ in a consultative way was also supported by the NSW Ombudsman.⁵¹⁶

Committee comment

- 4.105** The committee supports the view that evidence-based practices and programs are essential to support students with disabilities and special needs and encourages the Department of Education to continue the work of the Centre for Education Statistics and Evaluation in this area.
- 4.106** Furthermore, the committee is deeply concerned by the substantial body of evidence that demonstrates that the Arrowsmith Program is not an evidence-based program which can change the trajectories of student outcomes over time. The committee is worried that parents might spend thousands of dollars on program offered in New South Wales Schools that are not supported by evidence.

⁵⁰⁹ Evidence, Mr Scott, 23 June 2017, p 74.

⁵¹⁰ Evidence, Ms Geraldine Gray, State Coordinator, Special Learning Needs, Catholic Education Commission of NSW, 27 March 2017, pp 66-67 and Evidence, Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW, 27 March 2017, pp 66-67.

⁵¹¹ Evidence, Ms Rhonda Filmer, Vice-Chair, Specific Learning Difficulties Association of NSW 23 June 2017, p 6.

⁵¹² Answers to questions on notice, Catholic Education Commission NSW, 21 April 2017, pp 18-19.

⁵¹³ For example, Evidence, Dr Mark Carter, Associate Professor, Department of Educational Studies, Macquarie University, 3 April 2017, p 22.

⁵¹⁴ Evidence, Dr O’Neill, and Dr Howell, 3 April 2017, p 30.

⁵¹⁵ Evidence, Dr Carter, 3 April 2017, p 31.

⁵¹⁶ Evidence, Mr Kinmond, 11 August 2017 p 3.

Recommendation 18

That the NSW Government only offer programs in New South Wales schools that the NSW Department of Education can certify are supported by peer-reviewed evidence of change in the trajectories of student outcomes over time.

Recommendation 19

That, given the concerns raised regarding the efficacy of Reading Recovery, the NSW Department of Education fast track its assessment of this program and publish the outcome of its review.

Differentiation

- 4.107** In order to address the increasing diversity of need within classrooms, focus has shifted to personalised learning to ensure that students can access the curriculum and receive quality education. Mr Chris Presland, President, NSW Secondary Principals' Council, advised that:

Differentiation has been a focus for professional learning at many schools. Teachers are in the best position to determine if students require learning support. If teachers action their initial concerns through differentiation then students may receive timely access to the support required.⁵¹⁷

- 4.108** Teachers highlighted how important differentiation was within the classroom to meet the needs of all students. Mr Brett Holland, teacher, discussed the range of ability levels which exist within a classroom, which differentiation assists teachers to support:

In my environment we do have some students who are gifted and talented. It is a mainstream high school. We have the full range of ability. We also have students who are experiencing learning disabilities but are very, very bright as well and then we have students with learning difficulties, down to mild cognitive disabilities. Teachers need to be able to program for the whole range of abilities.⁵¹⁸

- 4.109** Ms Jessica Lobo, Senior Sector Development Officer, National Disability Services, explained how classroom differentiation can interface with the variety of plans and supports a student may be receiving:

Education plans align with the person with disability having a National Disability Insurance Scheme plan as well. It is looking at that child's goals and looking at other supports around them that are needed to achieve that goal and not standardising support but tailoring group learning to that child so that they can be included as well.⁵¹⁹

- 4.110** However, while the 'principles of differentiation' may be understood, a range of stakeholders questioned if teachers were adequately trained or knowledgeable in how differentiation works

⁵¹⁷ Evidence, Mr Presland, 27 March 2017, p 37.

⁵¹⁸ Evidence, Mr Holland, 8 June 2017, p 9.

⁵¹⁹ Evidence, Ms Lobo, 3 April 2017, p 73.

in a classroom, that is, ‘the actual nuts and bolts of what that looks like... to meet a range of needs within’ a classroom.⁵²⁰

4.111 The committee received evidence from stakeholders which indicated that differentiation is inconsistent and does not always happen. One parent commented, that students ‘...are in class, but they are not being taught in a way that they can learn’.⁵²¹

4.112 Indeed, teachers commented on the great difficulty in delivering a differentiated curriculum, in an inclusive way for all students, given the current levels of resourcing and the ‘complexity in the classroom’:

We are asking expert teachers in a secondary setting to operate sometimes back to stage two primary level. That is really difficult for a staff member to do that and still deliver content that improves the outcomes for the students who are at cohort level...[in] an environment that is conducive to all those students in that classroom.⁵²²

4.113 The adequacy of teacher time, skill, mindset and experience was raised a key limitation on the provision of individual or differentiated learning for students with disability, one teacher stated ‘I don’t feel equipped, confident and supported to provide enough support to my students with disabilities and special needs’.⁵²³ Teacher quality is discussed in Chapter 5.

4.114 Ms Allison Gentle, learning and support teacher, argued that while ‘the needs of most students can be met’ in the classroom, ‘there is a limit to how far the classroom program can stretch and that at the edges you need extra instruction for those students—not just up-skilling the teacher to do more but actually giving tailored and explicit instruction from a specialist teacher’.⁵²⁴

Access to curriculum

4.115 It is widely accepted that some students require differentiation of the curriculum itself. The NSW Education Standards Authority (NESA) is responsible for the development of an inclusive curriculum in New South Wales, including Life Skills courses for students with intellectual disability. The 2010 Upper House Inquiry, called for the inclusion of Life Skills courses in the incoming national curriculum. The NSW Government advised that while work continued with regard to the national curriculum, ‘NESA has retained Life Skills course options within the NSW curriculum’ and that Life Skills courses are now available for all subjects in Years 7-10 and 27 courses are available in Stage 6.⁵²⁵

4.116 While students are only to undertake Life Skills course options with parental agreement, concerns were raised by some stakeholders over attitudes and practices which preferred

⁵²⁰ Evidence, Ms Gentle, 23 June 2017, p 33.

⁵²¹ Evidence, Ms Duncan, 8 June 2017, p 16; See also, Evidence, Mrs Vanessa Comiskey, Parent, 19 May 2017, p 16.

⁵²² Evidence, Ms Pennisi, 8 May 2017, p 5.

⁵²³ Submission 308, Name suppressed, p 1.

⁵²⁴ Evidence, Ms Gentle, 23 June 2017, pp 33-34.

⁵²⁵ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs*, 2010, p 143; Submission 135, NSW Government, p 26.

Life Skills courses and limited access to the mainstream curriculum. Dr Laura Issa, parent, stated she had to change schools in order to ensure her son was able to access the mainstream curriculum, stating: 'In year 9 he had a lot of issues with the principal over her not allowing him to participate in mainstream curriculum and I voted with my feet: I literally decided at that point I am taking my son out.'⁵²⁶

- 4.117** This was supported by the view of Mr Robert Deacon, teacher at a School for Specific Purposes, who advised that:

Since 1996 my students have all been enrolled mainstream, not life skills, in personal development, health and physical education [PDHPE], so they all get a grade at the end of year 10. One of my concerns is that students with an intellectual disability are often automatically enrolled in life skills, and that should not be the case.⁵²⁷

- 4.118** It was also noted by Ms Tracy Gocher, Councillor, Federation Representative, NSW Teachers Federation, that Life Skills courses adds to the complexity teachers face in differentiating lessons in the classroom:

You may have a classroom that has some students on life skills and some students on mainstream curriculum so you are trying to modify the classes of 30 with one or two students on life skills. Year 11 and year 12 in SSPs again there is a broad range of SSPs. Some SSPs have a cohort that are more likely to be all on life skills, other SSPs have a cohort that will not have any life skills...⁵²⁸

- 4.119** Other curriculum concerns of stakeholders related to managing students who academically fell below or between stages. Mrs Anne Flint, Executive Member, Special Education Principals' and Leaders' Association NSW commented that:

There is the concept that all students, even the most profoundly disabled students, deserve educational provision. If you looked at the stretch of curriculum from early stage one to the end of high school, you would see that a large group of students sit below early stage one. Teachers are inventing that level of curriculum and hooking it on to the bottom outcome and calling it differentiation. SEPLA works with the national organisation, and we talk to special educator colleagues around Australia. Other States are taking on board assessment and curriculum tools that New South Wales as a system is choosing not to consider. Having said that, some individual schools are considering them. Individual schools in New South Wales are saying that there is some merit in this and that we can share it with our colleagues.⁵²⁹

- 4.120** Inequitable access to support and resources for secondary students enrolled in specialised settings was a reoccurring theme throughout the inquiry. While the committee received evidence that Schools for Specific Purposes, 'do their best'⁵³⁰ and 'attempt to deliver the entire

⁵²⁶ Evidence, Dr Issa, 27 March 2017, p 23.

⁵²⁷ Evidence, Mr Robert Deacon, Teacher, 23 June 2017, p 31.

⁵²⁸ Evidence, Ms Tracy Gocher, Councillor, Special Education Committee Member and NESA Special Education Advisory Committee Federation Representative, NSW Teachers Federation, 3 April 2017, p 8.

⁵²⁹ Evidence, Mrs Anne Flint, Executive Member, Special Education Principals' and Leaders' Association NSW, 27 March 2017, p 55.

⁵³⁰ Evidence, Ms Gocher, 3 April 2017, p 8.

curriculum⁵³¹ the lack of secondary teachers or facilities, such as science labs or cooking rooms, limits the curriculum options available to secondary students and inhibits how these students learn in those subject areas. One teacher commented ‘I wonder if the average parents would be happy having the PE teacher teach maths’⁵³²

- 4.121** Schools demonstrated how equitable access to the curriculum was possible with adequate resources and support. Ms Sheryl Bruffey, Principal, Budawang School, advised that:

Our school operates as a member of the Milton-Ulladulla community of schools. We work with you Ulladulla public, Milton public and Ulladulla High School to ensure that our students are not working in isolation from their peers. Our students attend integration classes at each of these schools for two hours a week, and each school joins us for integration classes, cultural events, work experience and traineeships. Our curriculum delivery is unique, because each of our classes spends one-third of each day in a community setting. We can do this because we own two small buses and we have great support from our local community.⁵³³

- 4.122** Support in Schools for Specific Purposes is discussed later in the chapter.

Adjustments

- 4.123** The Disability Standards for Education (2005) require all schools, regardless of sector, ‘to provide “reasonable adjustments” where needed to ensure that a student with disability can access and participate in education on the same basis as their peers. The Standards also require that reasonable adjustments are provided in consultation with the student and/or their parents or carers.’⁵³⁴
- 4.124** The NSW Government advised that under the provisions of the NSW *Anti-Discrimination Act 1977*, schools can only legally fail to provide reasonable adjustments on grounds of ‘unjustifiable hardship’.⁵³⁵
- 4.125** However, the Catholic Education Commission of NSW commented that there is also a lack of clarity regarding what is a reasonable adjustment:

In the context of DDA compliance requirements CECNSW submits that the current DDA Standards and Guidance Notes fail to provide sufficient direction as to how the Education Standards should be applied in circumstances where there are complex behavioural issues that may arise from disability. In particular, how to determine reasonable adjustments from unreasonable adjustments, consistent with DDA Education Standard 3.4 and Guidance Note 4.2, needs to be clarified for school decision makers and parents.⁵³⁶

⁵³¹ Evidence, Ms Sabrina Wiley, Teacher, Karonga School, 23 June 2017, p 45.

⁵³² Evidence, Ms Christofides, 19 May 2017, p 3.

⁵³³ Evidence, Ms Bruffey, 19 May 2017, p 27.

⁵³⁴ Submission 135, NSW Government, p 4.

⁵³⁵ Submission 135, NSW Government, p 48.

⁵³⁶ Submission 133, Catholic Education Commission of NSW, p 4.

- 4.126** While schools are responsible for making reasonable adjustments, it often falls to parents to request, or substantiate applications, in order for adjustments to be made. One parent discussed with the committee their role and expectations regarding reasonable adjustments:

Parents get all the assessments together, work therapy programs, coordinate multiple practitioners and try to make it all fun and playful instead of the hard work it often feels like. We lay the groundwork and provide the information to the school, with the expectation that the recommended supports and adjustments will be made to give the child a learning environment that provides equal access to the curriculum. It is imperative that schools work collaboratively with the child's family, therapists and early intervention providers to provide a holistic picture of the child's needs, so that the appropriate adjustments can be put in place to support the student on their learning journey.⁵³⁷

- 4.127** Ms Meg Clement-Couzner, Senior Systemic Advocate, Family Advocacy, stated that in her experience practices regarding adjustment were inconsistent and parents experienced difficulty and barriers in having adjustments made:

Often educators have very good suggestions about how to include children with disabilities and how to adjust for different needs. However, unfortunately often we are seeing situations where parents of children with disability are asking for what I would call and what policy language would call reasonable adjustments, but they are unfortunately finding themselves at loggerheads with educators.⁵³⁸

- 4.128** Nationally Consistent Collection of Data on School Students with Disability (NCCD) data is collected from teachers reporting on adjustments made for students,⁵³⁹ and some stakeholders expressed the view that 'teachers are feeling more informed and supported to provide adjustments'.⁵⁴⁰ However, others expressed the view that there was a lack of understanding of what a reasonable adjustment is in practice, with one teacher commenting, 'schools are well aware of the expectations and the legal requirements on them for admitting students, but I think there is a poor understanding of exactly what needs to be provided to students with disability'.⁵⁴¹

- 4.129** Indeed, inquiry participants often listed what they believed to be reasonable adjustments which they were unable to have made either at all, or in a timely and appropriate manner. Ms Robertson, parent, recounted her experience:

They were basic adjustments, so at that stage it was acoustic adjustments, which was like soundproofing panelling put on the walls. They are recommended adjustments for a deaf child. We had reports stating what was needed from professionals that worked with kids that are deaf. They had requested these because my son has tremendous difficulty in background noise. These adjustments are recommended for most kids with a hearing loss, but they just do not get made. We advocated for them through a

⁵³⁷ Evidence, Ms Robertson, 8 May 2017, p 13. See also, Answers to questions on notice, Family Advocacy, 1 May 2017, pp 3-5.

⁵³⁸ Evidence, Ms Clement-Couzner, 3 April 2017, p 67.

⁵³⁹ Submission 133, Catholic Education Commission of NSW, p 14.

⁵⁴⁰ Evidence, Mr Presland, 27 March 2017, p 37.

⁵⁴¹ Evidence, Ms Gentle, 23 June 2017, p 39. See also Submission 127, Name suppressed, p 10.

ministerial complaint. That was the process that we had to get to before those adjustments were made at a classroom level, which took a very long time.⁵⁴²

- 4.130** Parents and teachers alike expressed frustration at unnecessary administrative barriers and delays, where the onus is on parents and schools to make multiple requests, repeatedly follow up requests, or make complaints in order for adjustments to be made. For example:

We took such a long time to come to the point where we felt forced to make a human rights complaint. We tried everything at a school level, at a departmental level, at any level that we could come across. Everyone was passing the buck, saying, “That is the school’s responsibility,” while the school was saying, “That is the department’s responsibility.”⁵⁴³

One boy in my setting has waited now long over three years for a piece of equipment that would support him to be able to compete at the same level as his classmates in food technology. He is a wheelchair-bound student, who loves food tech. He is doing his Higher School Certificate [HSC] now. But ... I have been waiting since year 8—to get a movable bench with various equipment on it, as specified. After waiting two years with nothing happening and being basically mucked around by Gosford office, I followed it up one day and they said, “We are not going to go on with this because it does not come with an OT report.” I said, “I have never been informed that I needed an OT report.”⁵⁴⁴

- 4.131** Mr Tobias Cook, former student, informed the committee that a combination of barriers resulted in variable experiences for students across sectors, settings, and geographic locations with some schools making adjustments, while others ‘did not really have much knowledge’ and ‘were not really willing to make too many adjustments’.⁵⁴⁵

- 4.132** The evidence received by the committee indicated that the capacity of parents to advocate for adjustments does affect the amount and type of support received by a student. Mr Matthew Johnson, Principal, Glenvale School, stated that in reviewing applications for placement he noticed that:

...the level of intervention that schools have had is highly varied. Some students and parents who are articulate and have been able to advocate for their child more vigorously have tended to get more support than someone who might not be well versed to be able to work with bureaucracy and to access those services. They might not have the financial resources or supports, they might not have the family connections around them to be able to do that.⁵⁴⁶

- 4.133** Parents raised concerns over the amount of variation between schools, and the difficulty in ensuring adjustments are made in a consistent way. Ms Duncan, parent, argued ‘it should not be the luck of the draw whether your principal or teacher understands it or not’.⁵⁴⁷

⁵⁴² Evidence, Ms Robertson, 8 May 2017, p 17; See also, Answers to questions on notice, Family Advocacy, 1 May 2017, pp 3-5.

⁵⁴³ Evidence, Ms Robertson, 8 May 2017, p 17.

⁵⁴⁴ Evidence, Ms Pennisi, 8 May 2017, p 12, See also, Submission 258, Merrylands East Public School, p 4.

⁵⁴⁵ Evidence, Mr Tobias Cook, Former student, 23 June 2017, p 81.

⁵⁴⁶ Evidence, Mr Johnson, 8 May 2017, p 41.

⁵⁴⁷ Evidence, Ms Duncan, 8 June 2017, p 17.

Committee comment

- 4.134** The committee agrees with inquiry participants that greater clarity regarding reasonable adjustments should be provided to schools and parents. The committee recommends that the NSW Department of Education provide guidance to parents and training to schools on this issue.
- 4.135** The committee acknowledges the concerns of parents that the provision of some adjustments are not completed in a timely manner and that this in turn impacts on a student's ability to access and participate in education. We encourage the department to improve in this area, by setting timeframes for the implementation of reasonable adjustments for schools and regional support services.
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Recommendation 20

That the NSW Department of Education:

- provide clear guidance to parents and training to schools about what are considered reasonable adjustments for students with disabilities and special needs
 - set timeframes for the implementation of reasonable adjustments in schools.
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- 4.136** It should not be left to the individual approaches of schools and principals to establish best practice arrangements so that SSPs and mainstream schools co-operate fully to ensure students at SSP's have access to a full curriculum. It should be an obligation of the Department to establish best practice guidelines to assist this occurring.
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Recommendation 21

That the NSW Department of Education provide formal best practice guidelines to assist Schools for Specific Purposes work with neighbouring mainstream schools to deliver a full curriculum to their students.

Access Requests for Integration Funding Support

- 4.137** To assist schools meet the needs of students with moderate to high needs due to disability, funding for additional support can be sought through the Integration Funding Support Program, which provides additional targeted funding to government schools for eligible students with disability to support personalised adjustments that enable their attendance and participation in regular classes.⁵⁴⁸
- 4.138** In 2016, over \$112 million was expended through the program to assist more than 7,500 students.⁵⁴⁹ Ms Melissa Clements, Director, Disability, Learning and Support, NSW
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⁵⁴⁸ Submission 135, NSW Government, p 9.

⁵⁴⁹ Submission 135, NSW Government, p 10.

Department of Education, advised that the Integration Funding Support Program is responsive to demand, and that the funding available is ‘uncapped’, ‘[a]s the student numbers with those diagnoses seeking that support increase, those provisions increase accordingly.’⁵⁵⁰

- 4.139** Unlike the low level adjustment for disability equity loading, Integration Funding Support funding requires formal diagnosis and assessments.⁵⁵¹
- 4.140** Throughout the inquiry, participants informed the committee of their difficulty in obtaining a diagnosis due to lengthy waits for health services. The committee heard that community health wait lists in Sydney can be up to 18 months long, and that ‘a four-year waiting list’ existed in one rural and regional area which limited the ability of parents to obtain diagnosis in a timely manner.⁵⁵² Ms Aby Hutchinson-West, Manager Multidisciplinary Services, Northcott, advised that there are genuinely long waiting times in regional areas, ‘we are not even talking super-remote; we are talking about probably big country towns’.⁵⁵³
- 4.141** The cost associated with obtaining the required diagnosis and assessments was also raised as a concern which had the potential to limit the capacity of parents and schools to meet the requirements of submitting an Access Request. Ms Pennisi, teacher, advised that to obtain an accessible food technology station an occupational assessment was required, the ‘bill for the occupational therapist was in excess of \$800. We did not make the parent pay for it, but we had to wear it as a school out of our own funding.’⁵⁵⁴
- 4.142** However, while these are significant issues, the main frustrations voiced by schools and teachers related to the Access Request process itself, and how administrative processes and practices were barriers to the provision of additional support. Stakeholders raised concerns that schools were discouraged from making formal applications, the focus was on categorising severity of need against ‘domains’ and criteria rather than understanding student need, the process was too slow, overly time consuming and cumbersome, and that the quality of the application determined the provision of support.
- 4.143** The NSW Department of Education outlined the Access Request process which schools use to apply for funding as well as placement for students in specialised settings:

An Access Request is developed by a school’s learning and support team in consultation with school staff, specialist support teachers and school psychology and counselling services as well as parents or carers. The process ensures that comprehensive information and perspectives of the student’s abilities and additional needs is provided. Where access to Integration funding support is requested, this includes a profile of the student’s individual needs across learning domains, scored by the school from levels 1 to 4 based on the provided descriptors provided through the program.

⁵⁵⁰ Evidence, Ms Clements, 27 March 2017, p 17.

⁵⁵¹ Submission 135, NSW Government, p 10.

⁵⁵² Evidence, Dr Sowden, 3 April 2017, p 34. See also, Submission 121, NSW Secondary Principals’ Council, p 1; Evidence, Ms Christos, 23 June 2017, p 47.

⁵⁵³ Evidence, Ms Hutchinson-West, 3 April 2017, p 47.

⁵⁵⁴ Evidence, Ms Pennisi, 8 May 2017, p 10.

Once submitted by the school principal, the Local Educational Services team manages the Access Request process. ...

All targeted specialist support provisions for individual students are reviewed at the school level in collaboration with Educational Services staff. This review may result in a request from the school to change the type and/or level of support for a student. Some schools may refer this process as a 'review panel'.⁵⁵⁵

- 4.144** Ms Vera, NSW Teachers Federation, stated that informal advice received during a 'pre-step' process discouraged schools from initiating a formal application process in instances where additional funding was unlikely based on a schools judgement of a student's likely level of need:

We did become aware a few years ago through our members that this additional pre-step to what was the long-term established access request process was put in place which actually profiled the student and required the school to provide a view in terms of need against domain, and that that was used instead of actually activating an application for either integration funding or for an alternative and more appropriate support setting.⁵⁵⁶

- 4.145** Schools and parents raised concerns over the domain system determining student needs and the practice of domain level review by Education Services. Ms Vera argued that the practice amounted to an additional barrier to the provision of support based on need, stating:

It would appear that it is a barrier, particularly given when we have reports from members saying that departmental officers then ask for schools to actually lower the assessment, so lower the level of need that they believe the student has against those domains, and then ask them to resubmit. In effect, what they are asking is for the need to actually fit the existing provision or the available provision as opposed to the provision meeting the need.⁵⁵⁷

- 4.146** Some teachers felt that this practice dismissed the views of teachers and specialist support services. For example, Ms Pennisi was of the view that they 'are asking for my judgement. They have never seen the kid and they basically are saying, "No, you're wrong"', adding that changes to the domain are cumbersome administratively and 'slows the process'.⁵⁵⁸

- 4.147** Ms Pennisi went on to suggest that successful requests are often determined by the quality of the application and an understanding of the system rather than the needs of the student. She stated: '...[n]ow that I know the ropes and exactly what hoops to jump through, I am highly successful' in gaining additional funding.⁵⁵⁹

⁵⁵⁵ Answers to questions on notice, NSW Department of Education, 14 June 2017, pp 6-7.

⁵⁵⁶ Evidence, Ms Vera, 3 April 2017, p 6.

⁵⁵⁷ Evidence, Ms Vera, 3 April 2017, p 7. See also Submission 18, Ms Rachael Sowden, p 3; Submission 28, Name suppressed, p 1; Submission 324, Name suppressed, p 2.

⁵⁵⁸ Evidence, Ms Pennisi, 8 May 2017, pp 8-10. See also, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 14; Submission 324, Name suppressed, p 1.

⁵⁵⁹ Evidence, Ms Pennisi, 8 May 2017, p 7. See also, Submission 355, Name suppressed, p 1; Submission 378, Name suppressed, p 1.

- 4.148** The committee heard a range of complaints regarding inefficiencies and technical limitations of the program used to submit Access Requests, which resulted in ‘a lot of boxes to tick’ for limited benefit.⁵⁶⁰ For example, Mr John Kotlash, teacher, described the system as overly bureaucratic and time consuming for a large number of staff:

To start the access request process it needs a person to be able to sit down at a computer system for some hours for each child and put in some details. It then needs to be checked by a classroom teacher. It then needs to be rechecked by the person that originally started the details. It then needs to have input from a school counsellor. It then needs to have input from a district guidance officer, who are now called senior school psychologists. That process has been around for a very long time. What happens after that information is put into a computer is that a person at an office at your district level will aggregate those pieces of paper and then you will have a meeting to discuss which students of those are the priority. Lots of people come to those meetings, lots of people are involved in the process. It is fairly time consuming and it takes up a large portion of my time where I could be off doing other stuff. I think it is an administrative trouble that could be fixed if someone took a look at it and said, “Yeah, that’s a crazy system.”⁵⁶¹

- 4.149** Many teachers equally expressed frustration at the length of time it takes for a decision to be made, funds to be received and the impact delays have on the ability for schools to provide support to students. For example:

... might be lucky, you might get it in five weeks. Usually it is longer.⁵⁶²

One boy in my setting has waited now long over three years for a piece of equipment that would support him to be able to compete at the same level as his classmates in food technology.⁵⁶³

- 4.150** In addition to administrative issues, concerns were also raised about the adequacy of funding, the high threshold for eligibility, and school accountability regarding the expenditure of funds received. These funding issues are discussed in Chapter 3. Additionally, it became evident during the inquiry that there were differing views and understandings of the expenditure of targeted funding.

- 4.151** The NSW Government advised that funds approved through the Integration Funding Support Program contribute to a schools Resource Allocation Model and may be spent flexibly, stating:

While integration funding support is based on the profile of individual students, it forms part of the global budget of the school delivered through the RAM and can be used in combination with other funds in the school budget to support learning outcomes for the student.⁵⁶⁴

⁵⁶⁰ Evidence, Ms Christofides, 19 May 2017, p 10; See also, Submission 27, Name suppressed, p 1; Submission 258, Merrylands East Public School, p 4; Evidence, Ms Pennisi, 8 May 2017, p 10; Evidence, Ms Wilkins, 23 June 2017, p 48.

⁵⁶¹ Evidence, Mr Kotlash, 19 May 2017, p 9.

⁵⁶² Evidence, Mr Kotlash, 19 May 2017, p 9.

⁵⁶³ Evidence, Ms Pennisi, 8 May 2017, p 12.

⁵⁶⁴ Submission 135, NSW Government, p 10.

- 4.152** However, evidence from stakeholders, including parents and teachers, indicated there is an expectation that funding will be used specifically to support the individual student for whom it was attracted in the form of directly accountable personalised support.⁵⁶⁵

Committee comment

- 4.153** The committee acknowledges the volume of concerns raised by inquiry participants regarding the cost and time parents are faced with to complete assessments and get a diagnosis for their child.
- 4.154** We also acknowledge the avoidable difficulties teachers and schools face around the administrative practices for Access Requests. We note that the Department is to undertake a review of this process and we recommend the review be a priority for the Department with an aim to streamline and improve the process, including the timely provision of funds to schools.

Recommendation 22

That the NSW Department of Education prioritise its review of the Access Request process with a view to streamlining the process and facilitating the timely provision of funds to schools.

- 4.155** No child should be missing the opportunity to have their special needs considered because of the cost in obtaining supporting medical reports. There should be a means tested system in place to ensure that funding is available to parents to make sure this is the case.

Recommendation 23

That, as part of the NSW Department of Education's review of the Access Request process, it consider the need to meet the reasonable costs to parents of obtaining the necessary medical reports to support access requests for students with disabilities and special needs.

Recommendation 24

That the NSW Department of Education reform the Access Request process so that:

- all access requests applications are resolved within 28 days
 - real time data on the number of applications received, the numbers accepted, the numbers rejected, and the reasons for rejection is published.
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Schools for Specific Purposes

- 4.156** As discussed in Chapter 3, the support available to students enrolled in Schools for Specific Purposes (SSPs) is impacted by complex funding arrangements. While this chapter does not

⁵⁶⁵ For example, Evidence, Dr Issa, 27 March 2017, p 27; *In camera* evidence, Witness C, 19 May 2017, p 4, published by resolution of the committee.

revisit funding issues directly, it is extremely difficult to separate what support is available from the funding model used for SSPs.

4.157 The supports available in specialised settings, particularly SSPs, differ in structure from supports available in mainstream settings, but not in intent, with SSPs receiving ‘enhanced teacher staffing entitlements’ consisting of a teacher and school learning and support officer for each class.⁵⁶⁶

4.158 While SSPs did acknowledge that they ‘are well-resourced in that we have small classes and we have a teacher and an SLSO in every class’, the overarching concern regarding SSPs, was the inadequacy of these staffing levels to meet the higher support needs of the students enrolled in specialised settings.⁵⁶⁷

4.159 Ms Katrina Eyland, Principal, Principal, Havenlee School, discussed the impact of ESES on the type of support students enrolled in SSPs require:

What I have noticed is the slow change of enrolments of SSPs. Because of the success of the Every Student, Every School policy many students with disabilities are now being supported in either mainstream or support classes in mainstream schools who traditionally would have gone to an SSP. As a result SSP enrolments tend to be for students with higher more extreme support needs.⁵⁶⁸

4.160 Ms Eyland further advised that the high personal needs of some students and the ‘unpredictable and often violent behaviour’ of others placed pressure on staff and resources to managing competing needs and provide a safe learning environment:

We are finding it extremely difficult to ensure all students and staff remain safe while at the same time enabling students to have access to an engaging high quality educational experiences. SSPs are not physically set up or staffed adequately for the number of students with extreme behaviours.⁵⁶⁹

4.161 As discussed in Chapter 3, concerns were repeatedly raised with the committee by principals and teachers regarding the funding model used for SSPs and the impact of the model and funding anomalies on the capacity of SSPs to provide adequate support to students on an equitable basis and compliance with disability discrimination law. In evidence, inquiry participants often listed, at length, factors which limited the provision of support to students or supports which students in SSPs had no or limited access to, including:

- Specialist classrooms
- Learning and Support Teachers
- Secondary teachers
- Careers advisors
- School counsellors

⁵⁶⁶ Submission 135, NSW Government, p 13.

⁵⁶⁷ Evidence, Ms Turner, 19 May 2017, p 30. See also, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 19; Submission 325, Name suppressed, p 1.

⁵⁶⁸ Evidence, Ms Eyland, 19 May 2017, p 26.

⁵⁶⁹ Evidence, Ms Eyland, 19 May 2017, p 26.

- Allied health professionals
- Inequitable staffing release entitlements
- Increased supervision duties.⁵⁷⁰

4.162 The lack of secondary teachers was a particular concern, with a range of stakeholders questioning if schools were meeting their legal obligations regarding the provision of education to students with disability. Mr Maurie Mulheron, President, NSW Teachers Federation, commented:

We do not have the expertise to talk about the legality of it. We can describe the situation and others can draw the conclusion about whether it is discrimination. There is the reality that secondary students in a mainstream setting compared to students in a SSP school are treated differently.⁵⁷¹

4.163 Mr Robert Deacon, the only secondary PDHPE teacher employed in a SSP in New South Wales, expressed the opinion that students at his school ‘actually get access to specialised secondary teaching that no other students in SSPs get. To me that is educationally unsound and unfair to those students in the other SSPs’.⁵⁷² The case study below, outlines the additional support available to students at his school and the benefits that this has for providing a safe school environment, and improved educational outcomes.

Case study: Lawrence Hargrave Model

...my school is very well staffed—it is the best staffed school for specific purposes [SSP] in New South Wales—and I have seen the change in that school from a place that was day-to-day trauma in the name of education to a place that is not dissimilar to going to work in your local primary school or your local high school ... The trauma has been reduced by that extra staffing. The kids and the staff are achieving success, but I am aware that other schools similar to mine—IMED schools—are not like that. They are continuing to be places of extreme trauma day to day. That still concerns me and I know there is a solution through staffing to fix that, because that has happened in my school.

I am appointed as the PE teacher. We have an appointed home economics or food technology teacher and an information technology teacher. This is on top of our establishment. We are not actually entitled to those three positions ... No other schools have those. They came from south-west Sydney in the 1980s. Dr Alan Laughlin was part of that region and he thought that was a good idea for that school. That is great for those kids. They actually get access to specialised secondary teaching that no other students in SSPs get. To me that is educationally unsound and unfair to those students in the other SSPs.

... the classroom teacher [in other SSPs] has to teach every subject, but in our school they do not. That means that the students have access to a more diverse curriculum with specialised teaching, but the

⁵⁷⁰ For example, Evidence, Ms Vera, 3 April 2017, p 8; Evidence, Ms Bruffey, 19 May 2017, p 30; Evidence, Ms Turner, 19 May 2017, p 25; Evidence, Ms Gocher, 3 April 2017, p 8; Evidence, Ms Evans, Teacher, Karonga School, 23 June 2017, p 44.

⁵⁷¹ Evidence, Mr Maurie Mulheron, President, NSW Teachers Federation, 3 April 2017, p 8. See also Submission 2, Name suppressed, p 1; Submission 160, Special Education Principal’s and Leader’s Association (SEPLA) NSW, p 2.

⁵⁷² Evidence, Mr Deacon, 23 June 2017, p 33.

other advantage to the Lawrence Hargrave model is that there is extra release time for the teachers. According to the award they are only entitled to two hours release time from extremely difficult, challenging classrooms. In our school each morning the teacher and the students get a break from each other, and in the afternoon there are also at least two breaks because the students go off to a specialist teacher. That reduces the level of tension in that room with these extremely difficult students in a way that you cannot imagine.

I want you to imagine, if I was to ask seven high schools to send their most challenging student to one school and put them all in one classroom, how difficult that is. Very often that teacher is an inexperienced teacher with an inexperienced teacher's aide. In our school we are very lucky. We have a great corporate knowledge. Most of our staff have been there now for 10 years—that is the difference—because the place is not as traumatic. That improves so many things when you have experienced staff and that stability in the school.

... when a student's behaviour escalates or when we have any issue, we have an assistant principal, a classroom teacher and a teacher's aide who is able to support that student and deal with them one on one.

As a PE teacher I integrate the students as much as I can. Since 1988 they have participated in mainstream sport with the local schools in the local zones, primary and secondary. Since 2002, we have been a secondary school only. They play mainstream sport against mainstream students every Tuesday. Every Tuesday morning I take students up to Liverpool Boys High School and they do PE with the students there. Since 1996 my students have all been enrolled mainstream, not Life Skills, in personal development, health and physical education [PDHPE], so they all get a grade at the end of year 10.⁵⁷³

- 4.164** Other inquiry participants highlighted the inability of students in SSPs to access transition planning, opportunities and support equitably. For example, Ms Evans, teacher, Karonga School, expressed the view that inequitable staffing resources in Schools for Specific Purposes (SSPs), particularly the lack of careers advisers, limited the capacity of those schools to support post-school transition opportunities:

SSPs do not have a careers teacher position... in addition to my classroom responsibilities...I formulate personalised transition plans and experience for all our students in years 10, 11 and 12. There is no funding allocated for this preparation. I could do so much more for my students if I had equitable preparation time.⁵⁷⁴

- 4.165** Parents also raised concerns of what they believe to be a resource disparity between metropolitan SSPs and those based in and rural and regional New South Wales. Ms Thornton, parent, in comparing the educational support available in Sydney based SSPs, advocated for greater funding for rural and regional SSPs to redress the unequal access to support and resources across the state:

We have seen the best of what teachers and schools offer and we have seen how lack of resources and teacher and principal resources can impact the school and children. I would hope that the disparity between rural and city school resources and funding is addressed by this committee and that grassroots recommendations are put in place to ensure that all students' life needs and capabilities are met.⁵⁷⁵

⁵⁷³ Evidence, Mr Deacon, 23 June 2017, p 31.

⁵⁷⁴ Evidence, Ms Evans, Karonga School, 23 June 2017, p 43. See also, Evidence, Ms Turner, 19 May 2017, p 29; Evidence, Ms Eyland, 19 May 2017, p 28.

⁵⁷⁵ Evidence, Ms Caroline Thornton, Parent, 19 May 2017, p 11.

- 4.166** The Department of Education advised that in relation to its legal obligations: ‘The department’s Legal Services Directorate provides legal advice to schools and departmental staff on discrimination law. The department has also sought external legal advice on disability discrimination from time to time and will continue to do so as issues arise.’⁵⁷⁶

Committee comment

- 4.167** The committee acknowledges the concerns of inquiry participants that staffing levels in SSPs are inadequate and represent an inequity in the level and quality of education provided to the students in SSPs.
- 4.168** The committee understands that the level of support provided to students in these settings is intrinsically tied to the funding arrangements for SSPs. In this regard, the committee has made recommendations in Chapter 3 to improve the resource and staff allocations for SSPs. Implementing these recommendations are essential if New South Wales schools are to meet the disability standards set in state and federal legislation.
- 4.169** The committee is concerned by evidence that secondary students at SSPs do not have equal access to careers advice, counselling, specialist classrooms such as labs or kitchens and physical education as a result of the way that funding is structures.
- 4.170** Students with a disability are more, not less, likely to require this support than mainstream high school students. They are less, not more, likely to receive this support as a result of the existing funding formula.

Recommendation 25

That the NSW Department of Education consider publishing the advice it has been given in relation to its compliance with disability discrimination law in regards to service provision in Schools for Specific Purposes.

Support services and expertise

- 4.171** Access to support services and expertise was another overarching theme of the inquiry, particularly the inadequate provision of support by and access to allied health services, school counsellors and the Assisted Travel Program.

Access to allied health expertise and support

- 4.172** The committee acknowledges the breadth of support agencies, providers, services, and programs available to support and assist schools and teachers to meet the educational needs of students, including regional supports for government schools within the NSW Department of

⁵⁷⁶ Answers to questions on notice, NSW Government, 26 July 2017, p 8.

Education, inter-agency partnerships and the provision of support and services by NSW Health and allied health services.⁵⁷⁷

4.173 There was a general consensus expressed during the inquiry that the ‘right support at the right time in the right way and by the right people can make a world of difference’ for students with disabilities and special needs.⁵⁷⁸

4.174 A broad range of stakeholders argued that schools improve their capacity to meet the needs of students with disabilities and special needs by seeking the expertise of multidisciplinary teams to advise and support their teachers and school learning support officers. Ms Elleker Cohen, Sector Development Officer, National Disability Services, stated that professional expertise ‘can upskill a teacher and that teacher has that skill for life. It does not just benefit that one student that they are there for. Everybody has such different learning styles and needs within that sort of school environment that it has better outcomes for the whole school community’.⁵⁷⁹

4.175 Allied health stakeholders universally expressed the view that allied health professionals can play a vital role in identifying need and implementing reasonable adjustments to ‘ensure that the student is able to participate effectively ... [and] independently and to create an inclusive learning environment’.⁵⁸⁰ Ms Suzanne Becker, Chief Executive Officer, Lifestart, stated:

It is about educators in the education system working in partnership with other stakeholders—it might be allied health professionals, behaviour specialists or whoever—to ensure that reasonable adjustments are made for an individual child so that they can achieve the best learning outcomes.⁵⁸¹

4.176 Ms Caroline Thornton, provided the following perspective from the parent of a student who is also receiving support under the NDIS:

I do not think that the NDIS and the education department ... can be separated ... The teachers at his school are fantastic and can teach him, but to be able to have the capacity to be able to understand that he needs to be able to cut with [Peta] scissors, to cut paper in a different way, which therefore is increasing his strength ... that will help in the classroom. So I think having those funds and having qualified professionals assisting schools ... is crucial.⁵⁸²

⁵⁷⁷ Submission 135, NSW Government, Appendix G, pp 70-76.

⁵⁷⁸ Evidence, Ms Gaenor Dixon, President, and Ms Christine Lyons, Senior Advisor Professional Practice, Speech Pathology Australia, 8 May 2017, pp 27 and 29. See also, Submission 143, Australian Education Union New South Wales Teachers Federation Branch, p 7; Submission 94, Ms Megan Boukaseff, p 1.

⁵⁷⁹ Evidence, Ms Elleker Cohen, Sector Development Officer, National Disability Services, 3 April 2017, p 75. See also, Submission 4, Mr Brett Holland, p 1; Submission 108, Name suppressed, p 2; Submission 159, Children and Young People with Disability Australia, p 24; Submission 217, Avalon Public School, p 2; Submission 223, Name suppressed, pp 1-2; Evidence, Ms Dixon, and Ms Lyons, 8 May 2017, p 32; Evidence, Ms Anita Volkert, National Manager: Professional Standards and Representation, Occupational Therapy Australia, 19 May 2017, p 19.

⁵⁸⁰ Evidence, Ms Volkert, 19 May 2017, p 19.

⁵⁸¹ Evidence, Ms Becker, 3 April 2017, p 61.

⁵⁸² Evidence, Ms Thornton, 19 May 2017, pp 12-13.

- 4.177** Indeed, during the inquiry allied health professionals and teachers alike discussed the distinction between the two professions, arguing that it is not possible to think of them as interchangeable. Ms Edwina Turner, Principal, The Crescent School stated ‘... we are not speech therapists. We are trained as educators and we are able to enable our students to access education, and we do a great job at that.’⁵⁸³
- 4.178** Parents and allied health service providers raised concerns over the under-utilisation of available allied health services, and the lack of understanding, or outright opposition, by schools and teachers regarding the inclusion of allied health support and expertise. For example, Ms Gaenor Dixon, President, Speech Pathology Australia, was of the opinion that speech pathology services are not widely accessed by schools as ‘[t]here is not a good understanding necessarily in all schools around what supports speech pathologists can provide’.⁵⁸⁴
- 4.179** Schools who did see the value in specialist expertise and actively sought to meet the needs of their students through the provision of professional allied health support, advised of the difficulty of finding the necessary funds within their current budgets. Ms Bruffey, Principal, Budawang School, was of the view:
- Our money tends not to be well invested if we are hiring somebody like an SLSO, particularly if they are not well trained, that is why we go down the path of hiring speech therapists, occupational therapists and psychologists. But it is very expensive. But the knowledge, skill and new energy that those people bring into our school is very important for us. They provide lots of different flow-on effects, if you like. But if money is tight that is a very difficult decision. We have had to sacrifice other things so that we can afford to employ those people.⁵⁸⁵
- 4.180** Access to teachers and students during school time on school grounds was acknowledged by a number of inquiry participants as an issue which placed both perceived and real pressure on schools to conduct working with children checks and coordinate, manage and monitor, multiple services providers.⁵⁸⁶ The committee heard that under the current model, some schools were so overwhelmed with the ‘plethora’ of potential providers that schools have responded by restricting access altogether. Ms Bulkeley, Industry Advisor: Education and Disability, Occupational Therapy Australia, informed the committee that ‘One school ended up saying, “No, we are not having therapists come into the school anymore; it is too disruptive for the classroom.”’⁵⁸⁷
- 4.181** The distinction between the Sydney ‘bubble’, as it was described by one parent⁵⁸⁸, and the limited availability of allied health services in rural, regional and remote New South Wales was made by many stakeholders during the inquiry. The overwhelming view expressed was that the barriers and challenges ‘which impact on their learning’ are ‘exacerbated if students and their

⁵⁸³ Evidence, Ms Turner, 19 May 2017, p 33.

⁵⁸⁴ Evidence, Ms Dixon, 8 May 2017, pp 30-31. See also, Submission 40, Name suppressed, p 4; Evidence, Ms Bulkeley, 19 May 2017, p 19.

⁵⁸⁵ Evidence, Ms Bruffey, 19 May 2017, p 30.

⁵⁸⁶ Evidence, Ms Volkert, 19 May 2017, p 22; Evidence, Ms Lobo, and Ms Cohen, 3 April 2017, p 74.

⁵⁸⁷ Evidence, Ms Bulkeley, 19 May 2017, p 20.

⁵⁸⁸ Evidence, Ms Thornton, Parent, 19 May 2017, p 12.

families are in rural and regional areas because waiting times can be extraordinary for diagnosis or for access to services'.⁵⁸⁹

- 4.182** As discussed in Chapter 3 the introduction of the NDIS has significantly restructured how support services are provided to people with disability and has implications for the provision of support from both the disability and education sectors to students. Ms Anita Volkert, National Manager: Professional Standards and Representation, Occupational Therapy Australia, expressed the opinion that in practice, current NDIS transition arrangements are 'Blurred, muddy and patchy' and that there was a risk of losing a whole of school approach.⁵⁹⁰
- 4.183** Ms Dixon, Speech Pathology Australia, advised that schools can benefit when the NDIS and education sectors interface well and while there are examples of schools utilising NDIS funded services, there are equally disagreements regarding responsibilities and that '[t]his interface problem needs to be resolved at a policy level, so that the students do not miss out on the support they need regardless of NDIS eligibility' and equally that a student's NDIS funding is not exhausted on educational supports.⁵⁹¹
- 4.184** The NSW Department of Education advised that the issues raised by stakeholders were known and of priority to the 'pilot activities and the interdepartmental NDIS committee' and that the 'challenge as we work through that is the choice and control that the NDIS legislation provides those families to determine the providers they want to utilise and how we get the best balance between efficiencies and support at school.'⁵⁹²
- 4.185** Overall stakeholders were generally of the view that while 'there has been progress... support services remain fragmented, poorly coordinated and under-resourced.'⁵⁹³ The committee heard under the current system decisions regarding the provision of services or expertise are locally driven by individual school choices and parental requests, and as a result access to services and expertise varies substantially and enabled some schools 'to oppose specialist advice'⁵⁹⁴. Ms Bulkeley, Occupational Therapy Australia, commented, 'there are absolutely examples of [good] local practice, but it is not about a system'.⁵⁹⁵
- 4.186** A wide range of stakeholders expressed the need for the provision of systemic support for schools. Allied health professionals advocated for 'a whole school approach'⁵⁹⁶ using multidisciplinary teams under a model that is 'embedded within the structures of the sector ...

⁵⁸⁹ Evidence, Ms Pam Smith, Assistant Secretary and Women and Equity Committee Convenor, NSW Independent Education Union, 3 April 2017, p 11. See also, Evidence, Ms Hutchinson-West, 3 April 2017, p 46.

⁵⁹⁰ Evidence, Ms Volkert, 19 May 2017, p 20.

⁵⁹¹ Evidence, Ms Dixon, 8 May 2017, pp 27 and 29.

⁵⁹² Evidence, Mr Scott, 23 June 2017, p 28; Evidence, Ms Clements, 23 June 2017, p 68.

⁵⁹³ Evidence, Ms Callaghan, 3 April 2017, p 45. See also, Submission 115, NSW Primary Principals' Association, p 8; Submission 341, Name suppressed, p 1; Submission 391, Name suppressed, pp 3-4.

⁵⁹⁴ Submission 250, Mrs Cassandra Kavanagh, p 1.

⁵⁹⁵ Evidence, Ms Bulkeley, 19 May 2017, p 23.

⁵⁹⁶ Evidence, Ms Volkert, 19 May 2017, pp 20-21.

[and] employed directly by the Department of Education',⁵⁹⁷ working collaboratively with schools and teachers rather than as services which provide standalone student support.⁵⁹⁸

- 4.187 The NSW Ombudsman inquiry into behaviour management in schools similarly found that there is 'growing recognition that a stronger 'systems' model is needed to deliver the coordinated, multi-agency response which is often required' to support the needs of students. It acknowledged that the introduction of Networked Specialist Centres by the NSW Department of Education is a 'significant initiative', but noted that 'the potential of these centres has not been fully met nor the desired results seen in practice'.⁵⁹⁹

Committee comment

- 4.188 The committee notes stakeholders concerns regarding the variability of specialist support available to assist schools to identify and support the needs of students with disability. We also note that the introduction of the Networked Specialist Centres by the Department of Education have the potential to be a positive addition to the school environment especially for children with disabilities and special needs.
- 4.189 The committee recommends that the NSW Government review how allied health services and support is provided, including the direct employment of allied health professionals within the Department and introducing adequately resourced multidisciplinary teams at the regional level. The resourcing standard for speech pathology established in the Queensland education system appears to be the best practice standard in Australia and close consideration should be given by the Department to establishing a similar standard in New South Wales.

Recommendation 26

That the NSW Department of Education review how allied health services and support is provided in schools, including directly employing allied health professionals within the Department and introducing adequately resourced multidisciplinary teams at the regional level.

School Counsellors

- 4.190 All students have access to a school counsellor who supports the School Learning and Support Team to assess student need and support requirements, consult with parents and other agencies, and 'plays a key role in confirming student eligibility to access the department's specialist support provisions by applying the department's disability criteria'.⁶⁰⁰

⁵⁹⁷ Evidence, Ms Dixon, 8 May 2017, p 27.

⁵⁹⁸ See also, Submission 110, Name suppressed, p 1; Submission 118, Clarke Road School P&C Association, pp 3-4; Submission 210, Name suppressed, p 1; Evidence, Ms Dixon, and Ms Lyons, 8 May 2017, pp 27 and 29; Evidence, Ms Bulkeley, 19 May 2017, p 20.

⁵⁹⁹ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), pp xi-xii.

⁶⁰⁰ Submission 135, NSW Government, p 13.

- 4.191** The NSW Government advised that under the Supported Schools, Successful Students initiative, between July 2016 and 2018 the number of school counsellors would increase, from 790 to 1,026 positions.⁶⁰¹
- 4.192** The committee notes that this is the first increase in school counsellor positions since the 2010 Upper House inquiry which found there was an insufficient level of school counsellor support at that time with 790 positions and a counsellor to student ratio of 1:1030, and recommended a ratio of 1:500.⁶⁰²
- 4.193** Evidence received throughout this inquiry mirrored the tone of evidence received in 2010. Ms Cheryl McBride, Principal, Smithfield Public School who gave evidence in 2010 supporting increases to school counsellor allocations and the ‘difference’ they could make, advised the committee that in 2017 there is still a ‘chronic need’ for counselling services.⁶⁰³
- 4.194** Indeed, other schools were of the view that across all settings school counsellor allocations were either insufficient or inequitable. Some schools noting small increases in school counsellor allocations while others have experienced a reduction, or continued inequality in services.⁶⁰⁴ Ms Margret Wilkins, Acting Head Teacher, Personalised Learning, Rooty Hill High School stated, ‘We have just this year got almost a counsellor there every day... but we have nearly 1,200 kids.’⁶⁰⁵
- 4.195** Ms Sarah Rudling, Principal, Barrack Heights Public School, stated that allocations were insufficient to enable school counsellors to meet both the administrative support and therapeutic services required of them:
- I have a school counsellor just two days a week. It is very hard to engage my school counsellor in therapeutic work with students, which I have a high need for because I have a very grave proportion of children with mental health issues and they need therapeutic intervention from the school counsellor. When you are adding in the amount of time and effort it takes for a school counsellor to sit with parents and help them work through forms and things like that, it is an administrative task but it does require the expertise of a school counsellor to go through particular forms.⁶⁰⁶
- 4.196** Schools also provided evidence of the benefit of alternative wellbeing support and resources in improving their capacity to support students. For example, Ms Edwina Turner, Principal, The Crescent School, advised that they were ‘fortunate’ to receive three years of funding for a school chaplain to assist with NDIS planning which was ‘really valuable’ for the school.⁶⁰⁷

⁶⁰¹ Submission 135, NSW Government, p 32.

⁶⁰² General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs*, 2010, p 28.

⁶⁰³ General Purpose Standing Committee No. 2, NSW Legislative Council, *The provision of education to students with a disability or special needs*, 2010, p 28; Evidence, Ms Cheryl McBride, Principal, Smithfield Public School, 23 June 2017, p 53.

⁶⁰⁴ For example, Submission 168, South Western Sydney Primary Principals, p 13; Submission 181 Coonabarabran High School – Staff, p 1; Submission 182, Name suppressed, p 2; Evidence, Ms Vera, 3 April 2017, p 8; Evidence, Ms Christos, 23 June 2017, p4.

⁶⁰⁵ Evidence, Ms Wilkins, 23 June 2017, p 53.

⁶⁰⁶ Evidence, Ms Rudling, 19 May 2017, p 32.

⁶⁰⁷ Evidence, Ms Turner, 19 May 2017, p 31.

- 4.197** Indeed, Dr Sally Robinson, Senior Research Fellow, Centre for Children and Young People, Southern Cross University, advised that research undertaken in regional areas indicated that ‘having somebody who you could develop a sense of rapport with and a mutual sense of trust, respect and valuing’ was more important than ‘having a door with “School Counsellor” on it’ which ‘did not work for people’.⁶⁰⁸
- 4.198** Under Supported Students, Successful Students, funding increases are also available to alternative wellbeing positions and services that are available through the Wellbeing Framework for Schools, this included additional funding for schools, ‘state-wide support’, and ‘500 graduate scholarships to boost recruitment of school counselling and wellbeing positions’ and also to assist schools to develop the positive learning culture of the Framework.⁶⁰⁹

Committee comment

- 4.199** The committee acknowledges the value of alternative wellbeing positions to provide general support to schools, students and parents, however, the committee is of the view that the role and duties undertaken by school counsellors are critical to the provision of support to students with disabilities and special needs.
- 4.200** The committee supports the recommendations of the 2010 Upper House inquiry about school counsellors and in light of limited progress in this area, calls on the NSW Department of Education to provide school counsellors at a minimum ratio of 1:500.

Recommendation 27

That the NSW Department of Education provide school counsellors at a minimum ratio of 1:500.

Assisted School Travel Program

- 4.201** For many students with disabilities and special needs their greatest barrier to education is simply getting to school, with their ability to access education tied to their ability to access suitable transport assistance. As Ms Sheryl Bruffey, Principal, Budawang School, commented: ‘We service a radius of 55 kilometres, so assisted school travel is a significant resource, with access to our school being dependant on access to transport services.’⁶¹⁰
- 4.202** Through the Assisted School Travel Program the NSW Department of Education provides travel assistance to approximately 10,500 students enrolled in either government or non-government schools.⁶¹¹

⁶⁰⁸ Evidence, Dr Sally Robinson, Senior Research Fellow, Centre for Children and Young People, Southern Cross University, 8 June 2017, p 22.

⁶⁰⁹ Submission 135, NSW Government, p 32.

⁶¹⁰ Evidence, Ms Bruffey, 19 May 2017, p 27.

⁶¹¹ Submission 135, NSW Government, p 14.

4.203 Inquiry participants raised concerns with the program. For example, Ms Turner, Principal, The Crescent School, who suggested that the program, in its current form, limits ‘opportunity for inclusive and non-discriminatory access to education’.⁶¹² Others drew attention to program eligibility, the application process, and the management of the program as areas of concern.⁶¹³

Alternative educational settings

4.204 Much evidence presented to this inquiry indicated that parents were not actively seeking alternative education settings, rather they were withdrawing their children following the failure of formal school settings to ‘meet the educational needs of the student and/or to keep the child physically or psychologically safe’.⁶¹⁴ This includes seeking home schooling, distance education or partial enrolment.

4.205 For example, Dr Heyworth, a home schooling parent explained ‘... home schooling was a last resort for us. We do not feel we have a choice; there is no other option for us at this stage’.⁶¹⁵ Mr Roy echoed this view, maintaining that ‘Homeschooling should be an option; it should not be the last resort’.⁶¹⁶

4.206 Many parents expressed a deep anger and frustration around having to make this ‘choice’. As one parent explained:

You should not have to pick and choose a school in order to get your child looked after. It really frustrates me and makes me angry that parents have to go to some extent to try to find the right school for their child and then when they cannot find it, then they have to resort to distance education or homeschool. ⁶¹⁷

4.207 The committee received some evidence discussing the appropriateness and value of distance education or multiple settings for some students with disability, in order to facilitate personalised learning, and improve academic participation and achievement. For example, Ms Comisky, parent of a child undertaking distance education, advised the committee of the benefits distance education has had on her son’s education, health and wellbeing.⁶¹⁸

4.208 Indeed, the NSW Ombudsman inquiry into behaviour management in schools found that partial enrolment and distance education alternatives can be a ‘useful option for some students’, but expressed the view that approval of these educational alternatives should be

⁶¹² Evidence, Ms Turner, 19 May 2017, p 25.

⁶¹³ For example, Submission 65, Ms Robyn Christofides, p 2; Submission 105, Carers NSW, p 4; Submission 324, Name suppressed, p 1; Submission 353, Karonga SSP, p 5; Evidence, Ms Christos, 23 June 2017, p 51; Evidence, Ms Evans, 23 June 2017, p 51.

⁶¹⁴ Evidence, Dr Karleen Gribble, Disability Spokesperson, Home Education Association, 8 May 2017, p 23.

⁶¹⁵ Evidence, Dr Heyworth, 27 March 2017, p 26. See also, Submission 15, Name suppressed, p 1; Submission 116, Name suppressed, p 5; Evidence, Mrs Comiskey, Parent, 19 May 2017, p 11.

⁶¹⁶ Evidence, Mr Roy, 27 March 2017, p 25.

⁶¹⁷ Evidence, Mrs Comiskey, 19 May 2017, p 18.

⁶¹⁸ Evidence, Mrs Comiskey, 19 May 2017, p 12. See also, Submission 24, Name suppressed, p 1; Submission 108, Name suppressed, pp 1-2; Evidence, Ms Christofides, 19 May 2017, p 2.

based on expert advice, a rigorous approval processes, and appropriate planning and oversight.⁶¹⁹

Committee comment

- 4.209** The committee acknowledges with concern that parents have sought alternative education settings as a ‘last resort’, when all avenues for support within a formal school setting have seemingly failed. The committee hopes that the recommendations made throughout this report improve access to quality education for students with disabilities and special needs and removes the necessity for a ‘last resort’.
- 4.210** The committee notes part-time enrolment, distance education and enrolment in multiple settings may have potential benefits for some students with disability and that, when appropriate, the NSW Department of Education should actively assist parents and students to access these options.

⁶¹⁹ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p ix.

Chapter 5 Staff quality

This chapter will consider the nature and adequacy of teacher education and training, the impact of school leadership, and the roles and responsibilities of specialist teachers and school learning support officers in the provision of education to students with disabilities and special needs across New South Wales schools.

The importance of quality teaching

- 5.1** According to Mr Mark Scott, Secretary of the NSW Department of Education, ‘there is no doubt that the key to quality outcomes for all the students and our carers is the quality of the teaching and learning that takes place’.⁶²⁰
- 5.2** Indeed, the committee received evidence from inquiry participants who identified the quality of teaching – delivered by teachers, principals and other school staff alike – as arguably the most critical factor in determining educational achievement and fostering positive and supportive school environments.
- 5.3** For example, Dr Mark Carter, Associate Professor, Department of Education Studies, Macquarie University, asserted that teaching quality has a far more significant impact on learning than the setting in which it is being delivered:
- ... I would argue that regardless of where a child is and where instruction is delivered the critical thing is the quality of that instruction. You can argue the case as to whether inclusive or segregated settings are better, but certainly the research evidence would suggest that instruction has a much greater effect on learning than where the instruction is actually delivered.⁶²¹
- 5.4** As such, building teacher knowledge, skill and capacity to meet the needs of all students within a class, particularly those with disabilities and special needs, was a key focus of the current inquiry. Many commented on the need to support and maintain the highest quality of staff in both government and non-government schools across educational settings in order to achieve the best educational opportunities, outcomes and experience for students.⁶²²
- 5.5** For example, Ms Diane Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals’ Association, stated: ‘Ensuring teachers’ standing before all of those students ... continue to have high standards, extensive knowledge and training is a critical issue... Giving teachers the skill to manage these students is critical’.⁶²³

⁶²⁰ Evidence, Mr Mark Scott, Secretary, NSW Department of Education, 23 June 2017, p 54.

⁶²¹ Evidence, Dr Mark Carter, Associate Professor, Department of Education Studies, Macquarie University, 3 April 2017, p 27.

⁶²² For example, Submission 164, Lifestart, p 8; Submission 154, Uniting, pp 16-17; Submission 166, NSW Independent Education Union, p 11.

⁶²³ Evidence, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals Association, 27 March 2017, p 37.

Policy support for quality teaching

- 5.6** Since the 2010 Upper House inquiry into the provision of education to students with a disability or special needs (2010 Upper House inquiry), a number of key policy developments have taken place to enhance and support the quality of teaching delivered to students in schools across the state.
- 5.7** In 2012, the Australian Professional Standards for Teachers were approved by the NSW Minister for Education for application to all teachers in New South Wales.⁶²⁴ The Standards describe the seven elements of quality teaching, and define the knowledge, practice and professional engagement required of teachers in order to respond to student learning needs and improve educational outcomes.⁶²⁵
- 5.8** In New South Wales, a teacher's achievement of the Standards is assessed in accordance with the NSW teacher accreditation system, overseen by the NSW Education Standards Authority (NESA).⁶²⁶ Teacher accreditation will be discussed in greater detail later in the chapter.
- 5.9** Also in 2012, the NSW Department of Education introduced the Every Student, Every School (ESES) initiative to 'strengthen education provision for students with disability and additional learning needs in all NSW Government schools through a strong focus on professional learning and support for teachers and support staff'.⁶²⁷ According to the NSW Government, the initiative was developed and implemented 'in response to a number of key challenges, including issues identified in the [2010 Upper House inquiry]', such as the need to better equip teachers and support staff to understand and respond to the learning needs of their students.⁶²⁸
- 5.10** Under ESES, professional learning opportunities have been provided to teachers in NSW Government schools to support their understanding of obligations to students with disabilities, and to enhance their ability to address the diverse range of student learning needs. These opportunities include a range of accredited online learning courses and scholarships to gain postgraduate qualifications.⁶²⁹ The professional development of teachers is considered later in the chapter.

Teacher education and training

- 5.11** During the course of the inquiry, stakeholders identified many issues regarding teacher education and training, including broader concerns about the nature and adequacy of this instruction and its impact on students with disabilities and special needs. The following section outlines these concerns and, in particular, considers the need for teacher training in legal obligations and in evidence-based practice.

⁶²⁴ Submission 135, NSW Government, p 27

⁶²⁵ Submission 135, NSW Government, p 27.

⁶²⁶ Submission 135, NSW Government, p 27.

⁶²⁷ Submission 135, NSW Government, p 18.

⁶²⁸ Submission 135, NSW Government, p 18.

⁶²⁹ Submission 135, NSW Government, pp 19-20.

Adequacy of teacher education and training

5.12 Many inquiry participants questioned the adequacy of teacher education and training in meeting the learning needs of students across educational settings, especially within the mainstream school environment.⁶³⁰ Parents, in particular, expressed disappointment in the level of knowledge and understanding displayed by teachers around disability in its many forms, and highlighted the need to better prepare teachers to address the diverse disabilities presenting in mainstream classes. Teachers themselves reflected this view, telling the committee that they do not feel equipped to cater to the learning needs of students with disabilities and special needs.

5.13 Dr Laura Issa, parent of a former student with cerebral palsy, reflected on her child's mainstream schooling experience and attributed the difficulties they encountered to the inadequacy of teacher education and training. Dr Issa stated:

From my experience and my struggles throughout my son's journey it has been that lack of skills among teachers. I put that down to inadequate training during the formal university process and not getting exposure in the workplace to these issues.⁶³¹

5.14 Similarly, a parent of a student with multiple disabilities, including Autism Spectrum Disorder, Tourette Syndrome and severe gross motor delay, explained that their child was educated in a mainstream class throughout primary school where the best experiences were 'exemplary' but where the worst were 'deeply traumatising'.⁶³² Of this schooling experience, the parent stated: 'I was saddened... by the lack of education for teachers'.⁶³³ This parent believed that many teachers wanted 'to be doing the right thing' and sought the skills and understanding to meet the needs of students with disability but that they just 'did not have the knowledge, and support had not been provided either during their training or subsequently'.⁶³⁴

5.15 These sentiments were reflected by Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, who argued that teachers 'want to know how to better educate these kids' but that teachers need a lot of support and expertise.⁶³⁵ She explained:

They want to know how they can assist the child to get them in the space where they are best able to learn and have good outcomes, but to do that they need appropriate training and the appropriate resourcing and appropriate expertise...⁶³⁶

5.16 As such, Ms Julie Hermansen, parent of a child with dyslexia, asserted that teachers are ill-equipped through no fault of their own, particularly with regard to the needs of students with specific learning difficulties. She stated: 'I would like to be clear that I do not blame teachers. I

⁶³⁰ For example, Evidence, Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, 3 April 2017, p 54; Ms Carol Barnes, Academic and advocate, 3 April 2017, p 30; Submission 154, Uniting, p 15.

⁶³¹ Evidence, Dr Laura Issa, Parent, 27 March 2017, p 32.

⁶³² *In camera* evidence, Witness A, 8 May 2017, p 1, published by resolution of the committee.

⁶³³ *In camera* evidence, Witness A, 8 May 2017, p 4, published by resolution of the committee.

⁶³⁴ *In camera* evidence, Witness A, 8 May 2017, p 4, published by resolution of the committee.

⁶³⁵ Evidence, Ms Gotlib, 3 April 2017, p 53.

⁶³⁶ Evidence, Ms Gotlib, 3 April 2017, p 53.

know that they are poorly prepared at university for dyslexia and learning difficulties in general. Very few have access to professional development in this area'.⁶³⁷

5.17 In sharing these observations, Mr David Roy, parent and academic, concluded that adequate and appropriate education and training is simply not being delivered to teachers, either prior to their service or during it. As Mr Roy declared: 'I can tell you that I train people to be teachers and there is inadequate training. There is inadequate training at university and there is inadequate training on the job'.⁶³⁸

5.18 In particular, Mr Roy highlighted the inherent lack of understanding around the diversity of disability because teachers are not being trained in it. Mr Roy referred to the 'homogenous' set up of mainstream classrooms and how teachers are not being adequately educated in differentiation or identifying the individual needs of students who may or may not share common diagnoses.⁶³⁹

5.19 Other inquiry participants shared this concern, including Mr Tobias Cook, a former student with dyspraxia, a condition that affects the ability to plan and coordinate physical movement, such as handwriting. Mr Cook recounted his treatment at a mainstream school he was placed him in a support class because of his disability despite only needing simple adjustments if he were to be taught in a regular mainstream class. Mr Cook argued that the decision reflected a poor understanding of learning disabilities:

He thought if I had a learning disability I belonged in a special education class. I was more than capable of keeping up with the curriculum and keeping up with my fellow students, but to him it was just black and white.... [there was] a lack of understanding...⁶⁴⁰

5.20 The committee received extensive evidence from teachers and schools themselves about the inadequacies of their education and training.⁶⁴¹ For example, South Western Sydney Primary Principals reported that, based on the advice of principals from schools across settings in their area, principals feel that the provision and quality of professional learning for teachers, principals and support staff is 'totally inadequate'.⁶⁴²

5.21 One teacher stated that learning and support teachers 'aren't coping', as the Department has provided their team no training or guidance, leaving them 'overwhelmed' and 'achieving little':

Our current LaS Teacher (who has been a classroom teacher) is new to the role and is feeling overwhelmed by it all. She is trying to understand it all. There has been no guidance by the department, no training by the department, hence we go round and round achieving little. How are our mainstream teachers expected to cope if we, the

⁶³⁷ Evidence, Ms Julie Hermansen, Parent, 8 June 2017, p 11.

⁶³⁸ Evidence, Mr David Roy, Parent and academic, 27 March 2017, p 31.

⁶³⁹ Evidence, Mr Roy, 27 March 2017, p 32. Differentiation is considered in greater detail in Chapter 4.

⁶⁴⁰ Evidence, Mr Tobias Cook, Former student, 23 June 2017, p 81.

⁶⁴¹ For example, Ms Barbara Leiton, Members, NSW Independent Education Union, 3 April 2017, p 14; Submission 30, Ms Elizabeth Levar, p 1.

⁶⁴² Submission, 168, South Western Sydney Primary Principals, p 13.

L&S team aren't coping? How are we to train our teachers in providing quality education to our students with special needs if we haven't been trained?⁶⁴³

- 5.22** One inquiry participant stated that teachers are 'often left to survive on their own to meet the demands of students with disabilities', arguing that they are not given sufficient time to undertake teacher training: 'They're just expected to cope'.⁶⁴⁴
- 5.23** According to Ms Suzanne Becker, Chief Executive Officer, Lifestart, the teachers engaged with their organisation do not feel well-equipped to teach students with disabilities and special needs: '...they often say that they wish they had more training around supporting children with disability in the school system. They are not getting that training'.⁶⁴⁵
- 5.24** As a direct result of inadequate teacher knowledge and skill, inquiry participants argued that student needs are not being fully met and that many with disabilities and special needs are 'falling through the cracks'. The committee received evidence suggesting that this is particularly true for students requiring low-level adjustments to their learning or students with learning disabilities.⁶⁴⁶
- 5.25** For example, Mr Cook shared his perspectives as a student with a learning disability who wanted to learn and engage but was denied opportunities because of a lack of understanding about his disability. He told the committee he was excluded from a gifted and talented program he was interested in because he was told it was 'only for students with academic potential'. Mr Cook described his disappointment: 'At the time I was crushed – the 11-year-old me was crushed by that'.⁶⁴⁷
- 5.26** Similarly, Ms Hermansen discussed the impact on students with 'invisible' disabilities, such as dyslexia, where it is often not clear that a student has a disability. She argued that such students go undetected and unsupported throughout their schooling life, which can in turn have a profound impact on their future and wellbeing. Ms Hermansen explained:

Because it is an invisible disability, when you look at a child with dyslexia it is not obvious that they have a disability. They are often bright and have a very good vocabulary. They are often experts in finding ways to divert the attention away from what they cannot do, and they can easily fall through the cracks. Falling through the cracks brings with it a whole range of problems—for example, self-esteem and mental health issues. A comment I will never forget was made to me by a GP who had just assessed a 17-year-old boy who had dropped out of school. He had dyslexia, anxiety and depression. The GP's comment to me was: 'Imagine being thrown on the scrap heap of life at just 17'. They are strong words, but this is reality.⁶⁴⁸

⁶⁴³ Submission 272, Name suppressed, p 1

⁶⁴⁴ Submission 217, Avalon Public School, p 1.

⁶⁴⁵ Evidence, Ms Suzanne Becker, Chief Executive Officer, Lifestart, 3 April 2017, p 60.

⁶⁴⁶ For example, Submission 416, Mr Jim Bond, p 1; Submission 104, Name suppressed, p 1; Submission 174, Name suppressed, p 1.

⁶⁴⁷ Evidence, Mr Cook, 23 June 2017, p 83.

⁶⁴⁸ Evidence, Ms Hermansen, 8 June 2017, p 11.

Training in legal obligations

- 5.27** A number of inquiry participants, when discussing the adequacy of teacher education and training, drew particular attention to understanding of the rights of students with disability and the obligations of educators, as contained within legal instruments such as the Disability Standards for Education. As outlined in Chapter 2, these legal instruments underpin the provision of education to students with disabilities and special needs in New South Wales. As such, many stakeholders argued that there is an inherent need for school staff to be trained not only in the Standards and other legislative requirements, but how these should be applied in practice. Inquiry participants also discussed whether such training should be made mandatory for all teachers, least of all for school leadership, given that the legal obligations themselves are mandatory.
- 5.28** According to Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, since the introduction of the Every Student, Every School (ESES) policy, there has been ‘a significant enhanced understanding and awareness for all teachers and principals relating to the Disability Discrimination Act and the Disability Standards for Education’.⁶⁴⁹ He explained that this improvement is a ‘significant recognition of the changing profile of students in our schools and the increasing number of students with a disability who sit both within regular classes and also specific support areas’.⁶⁵⁰
- 5.29** Mr Chris Presland, President of the NSW Secondary Principals’ Council, agreed, stating that since ESES and the establishment of the Australian Professional Standards for Teachers, ‘teachers have become more attentive of their responsibilities under the legislation’.⁶⁵¹ While evidence discussed earlier suggested that teachers are not adequately trained to differentiate, Mr Presland argued that a greater awareness in their legal obligations has meant that teachers are increasingly focused on differentiation and are providing appropriate support to students based on their assessments.⁶⁵²
- 5.30** Although inquiry participants acknowledged that teachers are more aware of their obligations and expectations under the Disability Standards for Education and other legal instruments, many argued that a great deal more training is needed, particularly in the application of these instruments and the principles of inclusion captured within them.⁶⁵³
- 5.31** For example, Ms Allison Gentle, a teacher, advised that ‘schools are well aware of the expectations and the legal requirements on them’ but argued that there is poor understanding of how to meet these expectations and requirements in the classroom. She believed that there is lack of clarity in the Standards around what educating children with disability ‘on the same basis’ as students without disability means or what a ‘specialised support service’ is.⁶⁵⁴ Ms

⁶⁴⁹ Evidence, Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, 8 May 2017, p 42.

⁶⁵⁰ Evidence, Mr Harris, 8 May 2017, p 42.

⁶⁵¹ Evidence, Mr Chris Presland, President, NSW Secondary Principals’ Council, 27 March 2017, p 37.

⁶⁵² Evidence, Mr Presland, 27 March 2017, p 37.

⁶⁵³ For example, Ms Jessica Lobo, Senior Sector Development Officer, National Disability Service, 3 April 2017, p 71; Evidence, Ms Becker, 3 April 2017, p 60; *In camera* evidence, Witness A, 8 May 2017, p 4, published by resolution of the committee.

⁶⁵⁴ Evidence, Ms Allison Gentle, Teacher, 23 June 2017, p 39.

Gentle suggested that greater knowledge and training in key elements of the Standards could address this:

I think there is still a place for a deeper knowledge among executives and teachers about the key elements of [the] Disability Standards for Education to make sure that what we are providing to kids with learning disabilities is in line with our legal requirements, at least, if not more.⁶⁵⁵

- 5.32** One parent was surprised at the lack of education among teachers around inclusive practices when their son attended a mainstream school, stating: ‘I did feel that there did not seem to have been a lot of teaching about inclusion’.⁶⁵⁶ The parent believed that many teachers, whether they be in a regular class or a support unit, are not adequately trained in how to include students with disabilities and special needs in a mainstream environment:

I feel we have a situation where we have a lot of kids with special needs in mainstream schools but perhaps not a lot of teaching of either mainstream teachers or special-needs teachers about the specifics of including a child with special needs in the mainstream...⁶⁵⁷

- 5.33** Others insisted that more training in legal rights and obligations is necessary because, while some teachers may understand what is required of them, this understanding is not informing broader decision making around students with disabilities and special needs.

- 5.34** For example, Ms Becker, Lifestart, asserted that there are ‘many teachers and members of the education community that understand [the Disability Standards for Education]’, however, there are ‘many more who just do not reference that in their decision making or in their relationships with families, carers and students’.⁶⁵⁸

- 5.35** Ms Meg Clements-Couzner, Senior Systemic Advocate, Family Advocacy, reflected this view, pointing to cases of enrolment refusal shared by families of students with disabilities and special needs as evidence. For Ms Clements-Couzner, not only is there a ‘desperate need’ for teacher training in this area but that the training should be mandatory:

The evidence of rejection indicates the desperate need for mandatory training for principals and staff regarding the rights of students with disability and, indeed, the rights of all students.⁶⁵⁹

- 5.36** Indeed, a number of inquiry participants called for mandatory training in the legal obligations of teachers to students with disability, given that the obligations are mandatory by law. For example, Ms Gotlib, Children and Young People with Disability Australia, argued that teachers’ legal requirements should be included in standard teacher education and questioned why they are not already:

⁶⁵⁵ Evidence, Ms Gentle, 23 June 2017, p 39.

⁶⁵⁶ *In camera* evidence, Witness A, 8 May 2017, p 4, published by resolution of the committee.

⁶⁵⁷ *In camera* evidence, Witness A, 8 May 2017, p 4, published by resolution of the committee.

⁶⁵⁸ Evidence, Ms Becker, 3 April 2017, p 60.

⁶⁵⁹ Evidence, Ms Meg Clements-Couzner, Senior Systemic Advocate, Family Advocacy, 3 April 2017, p 67.

I am not quite sure why it is not a part of every teacher's training... [I]f Australia is serious about meeting its obligations under CRPD [UN Convention on the Rights of Persons with Disabilities], and looking at the General Comment on the Right to Inclusive Education that was released last year, I think it needs to be a mandatory part of every teacher's education.⁶⁶⁰

- 5.37** The committee received evidence that, since 2013, more than 81,000 e-learning courses on the Disability Standards for Education have been undertaken by more than 59,300 principals, teachers and school learning support officers.⁶⁶¹ However, it is understood that out of the total number of staff who have completed a registered training course on their legal obligations (5,937), only 1,392 were school principals in 2016-2017.⁶⁶²
- 5.38** Some parents expressed shock and disappointment that principals, in particular, are not required to undertake training in their legal obligations to students with disabilities and special needs.⁶⁶³ As Dr Issa stated: 'I am shocked because I would have thought that, as a principal, the minimum requirement would be that you would be adequately trained in understanding what your duty of care means'.⁶⁶⁴ Principal training is discussed later in the chapter.
- 5.39** Such views are broadly consistent with the findings of the NSW Ombudsman in their inquiry into behaviours management in schools. Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, advised that enhancing baseline skills and training for certain roles was an important finding, as was the need to identify what is required in terms of professional learning that should be mandatory. In particular, the report proposed that, for principals, training in the Disability Standards for Education and their practical application should be mandatory.⁶⁶⁵
- 5.40** When asked about training in the Disability Standards for Education, Dr Lynn Gardon, Relieving Director School Services, NSW Department of Education, confirmed that training in the Standards is not mandatory 'but the messages contained in it are'.⁶⁶⁶ Furthermore, Dr Gardon argued that making training mandatory does not automatically equate to changes in practice. She explained:
- I think the training develops understanding. Whether or not it translates into practice is another thing. I think they are two separate things. Making training mandatory does not mean that the practice will change.⁶⁶⁷
- 5.41** Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, indicated that training on the Standards that focus on enrolment, in particular, is

⁶⁶⁰ Evidence, Ms Gotlib, 3 April 2017, p 54.

⁶⁶¹ Submission 135, NSW Government, p 20.

⁶⁶² Answers to questions on notice, NSW Department of Education, 21 April 2017, p 16.

⁶⁶³ For example, Evidence, Mr Roy, 27 March 2017, p 32; Evidence, Dr Rachel Sowden, Parent and New England Delegate, Parents and Citizens Associations of New South Wales, 3 April 2017, p 32.

⁶⁶⁴ Evidence, Dr Issa, 27 March 2017, p 32.

⁶⁶⁵ Evidence, Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, 11 August 2017, p 2.

⁶⁶⁶ Evidence, Dr Lyn Gardon, Relieving Director School Services, NSW Department of Education, 8 June 2017, p 28.

⁶⁶⁷ Evidence, Dr Gardon, 8 June 2017, p 28.

due for review, creating an opportunity to consider elements of the Standards that are not clear:

The training that is specifically focused on the disability standards that addresses enrolment has been in place for a couple of years now. It is time for that to be looked at, in terms of what can be built on to strengthen that training. I guess this gives us an opportunity to look at what are the elements of the standards that may be less well understood or more particularly problematic.⁶⁶⁸

Committee comment

- 5.42** Following on from the Department's comments that the training in the Disability Standards for Education is due for a review, and inquiry participants calls for school staff to be trained not only in the Standards and other legislative requirements, but in how these should be applied in practice, the committee recommends that the Department review the training in the Standards with a focus on practical application in the training.

Recommendation 28

That the NSW Department of Education review training in the legal obligations and Disability Standards for Education with a focus on practical application of the training.

- 5.43** The committee acknowledges the concerns of inquiry participants that training in the legal obligations and Disability Standards for Education should be made mandatory for all teachers, least of all for school leadership, given that the legal obligations are mandatory. The committee notes that in 2016-2017, 1,392 school principals undertook the training. However, as there are over 2,200 government schools in New South Wales it is likely that there are a significant number of principals who have not undertaken the training.
- 5.44** As principal quality and school leadership is a key factor in producing positive educational outcomes and experiences for students with disabilities and special needs the committee recommends that training in the legal obligations and Disability Standards for Education should be made mandatory for principals. Moving forward, the committee also recommends that NSW Education Standards Authority investigate the feasibility of making training in the legal obligations and Disability Standards for Education part of the accreditation process for all teachers and principals.

Recommendation 29

That the NSW Department of Education make training in legal obligations and the Disability Standards for Education mandatory for principals.

⁶⁶⁸ Evidence, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, 27 March 2017, p 4.

Recommendation 30

That the NSW Education Standards Authority investigate the feasibility of making training in legal obligations and the Disability Standards for Education part of the accreditation process for all teachers and principals.

Training in evidence-based practice

- 5.45** The adequacy of teacher education and training in evidence-based practice was also raised by a number of inquiry participants. The committee received evidence that, for students with disabilities and special needs in particular, the use of teaching practices that reflect empirical research and testing – rather than opinion or fad – is critical. Stakeholders advocated for education in evidence-based practice to be included at all stages of teacher training.
- 5.46** According to Dr Carter, Macquarie University, the field of education has not historically been based on practices of evidence – that is, ‘rigorous empirical research that has been peer reviewed and is typically published in scientific-based journals’.⁶⁶⁹ Instead, he explained, practices in education have been based on ‘opinion, fad, ideology, anecdote and consensus’.⁶⁷⁰
- 5.47** As a result, Dr Sue O’Neill, Lecturer in Special Education, School of Education, University of New South Wales, asserted that ‘for too long... teaching has been viewed as an art form rather than a science’.⁶⁷¹ However, she argued that there is in fact a ‘science of teaching’ – one that must be engaged for students with disabilities and special needs moving forward. Dr O’Neill explained:
- ...[there is a] need for evidence-based practice in everything we do when it comes to people with disabilities. It is imperative that those instructional practices really do reflect what we know to be effective rather than...those fads or trends that happen in the area of special education.⁶⁷²
- 5.48** Indeed, a number of inquiry participants highlighted the significance and need for teaching practice to be informed by evidence. For example, Specific Learning Difficulties Association of NSW (SPELD) emphasised the importance of ‘the collection and implementation of best evidence-based research’ to inform and validate teaching practice.⁶⁷³
- 5.49** Ms Gotlib, Children and Young People with Disability Australia, echoed this view, stating: ‘It is really important when we look forward that there is an evidence base for what we are going to do...’.⁶⁷⁴ Ms Gotlib drew particular attention to current practices in special education that are based, not in evidence, but on assumed expertise or are used out of habit. She warned:

⁶⁶⁹ Evidence, Dr Carter, 3 April 2017, p 20.

⁶⁷⁰ Evidence, Dr Carter, 3 April 2017, p 20.

⁶⁷¹ Evidence, Dr Sue O’Neill, Lecturer in Special Education, School of Education, University of New South Wales, 3 April 2017, p 22.

⁶⁷² Evidence, Dr O’Neill, 3 April 2017, p 21.

⁶⁷³ Submission 165, Specific Learning Difficulties Association of NSW, p 7.

⁶⁷⁴ Evidence, Ms Gotlib, 3 April 2017, p 55.

In this space there is a lot of assumed expertise around kids with disability in the system. I think that is very dangerous. We often see practices like restraint and seclusion, which are not evidence based, and teaching modifications that are not evidence based... Often we hear that people have done the same thing for 20 years and it has always worked.⁶⁷⁵

5.50 Similarly, SPELD, among other inquiry participants, discussed current teaching practices in literacy to demonstrate the need for education around evidence-based practice.⁶⁷⁶ Further consideration on the use of certain literacy intervention programs to support students with disabilities and special needs is discussed in Chapter 4.

5.51 Stakeholders argued that teachers must therefore be encouraged to engage and apply the 'science of teaching'. For example, Dr O'Neill stated that teachers need to actively seek research and be guided by evidence to inform their teaching practices, and that these evidence-based principles need to be at the forefront of any teacher education and training:

We are very keen to advocate for evidence-based practice as the forefront thing that should be part of the training that pre-service and in-service teachers are receiving in any kind of professional development or initial teacher training that they receive. We really need to work on getting teachers to seek out and look for research, and be guided by research rather than by hearsay.⁶⁷⁷

Teacher accreditation

5.52 To be an accredited teacher in New South Wales, teachers must meet minimum requirements set by the NSW Education Standards Authority (NESA). These requirements ensure that teachers comply with the Australian Professional Standards for Teachers.

5.53 As part of this accreditation system, teachers must complete initial teacher education and produce a portfolio of evidence to demonstrate a certain standard of proficiency. Then, in order to maintain this standard, teachers must complete 100 hours of professional development over five years, 50 hours of which is NESA-identified and registered and 50 hours of which can be self-identified.⁶⁷⁸

5.54 Mr Paul Martin, Executive Director, Quality Teaching, NESA, informed the committee that this system allows NESA to set and monitor teacher quality across the state. He explained:

What we do... in terms of the monitoring of teacher quality is put a floor under a qualification requirement, put a minimum quality requirement and put a maintenance of quality requirement for the workforce.⁶⁷⁹

⁶⁷⁵ Evidence, Ms Gotlib, 3 April 2017, p 55.

⁶⁷⁶ For example, Submission 165, Specific Learning Difficulties Association of NSW, p 8; Evidence, Dr Therese Cumming, Associate Professor in Special Education, School of Education, University of New South Wales, 3 April 2017, p 23; Evidence, Dr Sally Howell, Principal of the MUSEC School, Department of Educational Studies, Macquarie University, 3 April 2017, p 22.

⁶⁷⁷ Evidence, Dr O'Neill, 3 April 2017, p 22.

⁶⁷⁸ Evidence, Mr Paul Martin, Executive Director, Quality Teaching, NSW Education Standards Authority, 23 June 2017, p 21.

⁶⁷⁹ Evidence, Mr Martin, 23 June 2017, p 21.

- 5.55** Mr Martin further advised that, in addition to the NESA requirements for accreditation, ‘each of the systems, sectors and employing authorities have their own ways of determining the efficiency of a teacher within their schools’.⁶⁸⁰
- 5.56** The following sections consider issues identified during the inquiry as they relate to initial teacher education and professional development.

Initial teacher education

- 5.57** Initial teacher education, also known as pre-service training, was discussed by a number of inquiry participants. In particular, the mandatory unit in special education included in university teaching courses was raised, as was the need for stronger integration of special education content across the course. Some inquiry participants suggested that extending the pre-service teaching program should be considered if concerns around the adequacy of training in teachers’ legal obligations are to be addressed.
- 5.58** Since 1992, all teacher education courses provided by New South Wales universities and teacher education institutions contain a mandatory unit in special education.⁶⁸¹ In addition, there is a requirement for teacher education courses to have special education content embedded and delivered throughout the course.⁶⁸²
- 5.59** In the 2010 Upper House inquiry, recommendations were made around reviewing the content of the mandatory unit and embedding special education content throughout pre-service training.
- 5.60** Mr Martin advised that, since the 2013 launch of the NSW Government’s Great Teaching, Inspired Learning initiative action plan to improve teacher quality and student learning outcomes, teacher education programs have been investigated and the integration of special education content across all units in a teaching course has become a requirement.⁶⁸³ He stated:

...[A]s a result of inquiries under Great Teaching, Inspired Learning... we investigated teacher education programs to see how well they were incorporating those [mandatory] units and added an additional requirement that the teaching of students with particular special education needs should be delivered in all aspects of a teacher education course as well as the mandatory standalone unit.⁶⁸⁴

- 5.61** In the current inquiry, one of the key concerns around initial teacher education centred on evidence that the mandatory unit in special education is now no longer required. Inquiry participants, such as the NSW Chapter of the Australian Association of Special Education,

⁶⁸⁰ Evidence, Mr Martin, 23 June 2017, p 28.

⁶⁸¹ Evidence, Mr Martin, 23 June 2017, p 22.

⁶⁸² Evidence, Mr Martin, 23 June 2017, p 24.

⁶⁸³ Evidence, Mr Martin, 23 June 2017, p 22; See also NSW Education Standard Authority, *Great Teaching, Inspired Learning*, <<http://educationstandards.nsw.edu.au/wps/portal/nesa/about/initiatives/great-teaching-inspired-learning>>.

⁶⁸⁴ Evidence, Mr Martin, 23 June 2017, p 22.

expressed deep concern over this development, arguing that the removal of the unit is a ‘significant reduction in the quality of teacher education programs’.⁶⁸⁵

- 5.62** Mr Martin explained that, in adopting the Australian Professional Standards for Teachers, the Commonwealth and State-based requirements for teacher education and training needed to be combined. In communicating this to its providers, Mr Martin acknowledged there was a lack of clarity and advised that NESAs have since clarified the matter:

In the document... it does say quite clearly that there needs to be a standalone unit, but in another part of the document it says less clearly and implies the integration of the specific content across the range of units in the course. As soon as we found out about that we clarified it, informed all of the providers and have given a clear indication that the mandatory unit still stands.⁶⁸⁶

- 5.63** NESAs clarified that there has been no decision to remove the mandatory special education unit. Mr Martin advised: ‘...the mandatory unit still stands. No ITE [initial teacher education] course in New South Wales has been approved without a mandatory unit, nor will it be approved without a mandatory unit’.⁶⁸⁷

- 5.64** Other inquiry participants commented on the embedding of special education content across all other units of the pre-service teaching course. They argued that there is a need for stronger integration of knowledge and practice in meeting the needs of students with disability throughout the course, including a greater focus on differentiation.

- 5.65** For example, while acknowledging the value of the mandatory unit, Ms Meredith Fawcett, Executive Member, NSW Secondary Principals Council, asserted that special education needs to be ‘fully integrated across the courses’ and argued that in doing so, teachers would ‘understand more about differentiation and the learning needs of the majority of students in their classroom’.⁶⁸⁸

- 5.66** Ms Becker, Lifestart, expressed a similar point, arguing that teaching courses need to emphasise differentiation and personalisation in every aspect:

We should be approaching training from the concept that every child is unique and every child is diverse. So we go from that starting point and you come back. All training should be around being able to work as a teacher with any child. That training should be embedded in all aspects of university training on education.⁶⁸⁹

- 5.67** Some inquiry participants suggested that in order to adequately prepare teachers to not only address the needs of students with disability but to practice the principles of inclusion and meet their legal obligations, initial teacher education programs should be extended. For example, Dr Mark Carter, Associate Professor, Department of Education Studies, Macquarie

⁶⁸⁵ Submission 119a, Australian Association of Special Education, NSW Chapter, p 1.

⁶⁸⁶ Evidence, Mr Martin, 23 June 2017, p 22.

⁶⁸⁷ Evidence, Mr Martin, 23 June 2017, p 22.

⁶⁸⁸ Evidence, Ms Meredith Fawcett, Executive Member, NSW Secondary Principals Council, 27 March 2017, p 53.

⁶⁸⁹ Evidence, Ms Becker, 3 April 2017, p 60.

University, in recognising that teaching courses are already full, said programs could be extended from between six to twelve months to ensure teachers are adequately skilled:

...the difficulty is that the program is so full it is extremely difficult to finish within three years. We looked at that a number of years ago and the best we could do would be to add six months to their existing program. More realistically, to do a reasonable job, it would take 12 months additional.⁶⁹⁰

5.68 According to Ms Gotlib, Children and Young People with Disability Australia, increasing the length of teaching degrees would be a worthwhile investment for the long term benefit of students with disabilities and special needs:

If you want to be crude about it and just look at it in terms of a cost, if it is going to mean the difference between a child being able to access and participate in their education and the economic outcomes for that child, yes—it is going to be an absolutely worthy investment.⁶⁹¹

5.69 However, some inquiry participants, such as Ms Julie Phillips, Member, Children and Young People with Disability Australia, acknowledged that in order to cater to certain students with complex needs, additional initial teacher training may not be not enough. In these circumstances, teachers need to know when to draw on expertise. Ms Phillips argued:

I think that the other important thing is that many of these children who have complex presentations—for example, multiple disabilities, particularly with cognitive disabilities like autism spectrum disorder, ADD et cetera—this extra six months training is not going to be enough. Schools have to recognise and be resourced when they need to bring experts in. I think this is particularly important in terms of behaviours of concern which have such drastic responses...⁶⁹²

5.70 Indeed, some such as Ms Edwina Turner, Principal, The Crescent School, cautioned against expectations that teachers are therapy experts, stating: ‘...we are not speech therapists. We are trained as educators and we are able to enable our students to access education, and we do a great job at that. But we do not have that expertise...’⁶⁹³ Homebush Public School shared this view, advising: ‘Teachers are in the profession to teach and are not equipped with the knowledge and expertise to deal with every disorder being identified’.⁶⁹⁴

5.71 Other inquiry participants commented on the importance of experience to complement and reinforce initial teacher education, suggesting that teacher training is necessary but not sufficient in developing the knowledge and skills to meet learning needs and draw quality educational outcomes from students with disability.⁶⁹⁵ As stated by Ms Diane Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals Association, ‘expertise is gained from doing the coalface implementation’.⁶⁹⁶

⁶⁹⁰ Evidence, Dr Carter, 3 April 2017, p 28.

⁶⁹¹ Evidence, Ms Gotlib, 3 April 2017, p 54.

⁶⁹² Evidence, Ms Julie Phillips, Members, Children and Young People with Disability Australia, 3 April 2017, p 54.

⁶⁹³ Evidence, Ms Edwina Turner, Principal, The Crescent School, 19 May 2017, p 33.

⁶⁹⁴ Submission 344, Homebush Public School, p 1.

⁶⁹⁵ For example, Submission 194, Name suppressed, p 2.

⁶⁹⁶ Evidence, Ms Robertson, 27 March 2017, p 54.

- 5.72** Dr Lyn Gardon, Relieving Director School Services, NSW Department of Education, expressed this view, asserting that training ‘most certainly helps people to deepen their understanding’ but that experience, in particular, plays a significant role in teachers providing quality education to students with disabilities and special needs.⁶⁹⁷
- 5.73** One inquiry participant argued that pre-graduates should spend ‘hundreds of hours in classrooms to ensure that they are able to teach before they are given the independence to do so.’ They called for ‘good habits’ to be formed early during initial teacher education and advocated for teacher training to be modelled on how medical practitioners are trained. To address the diverse needs of students across educational settings, this inquiry participant suggested that initial teacher education should include an internship component in both mainstream and special classes.⁶⁹⁸

Professional development

- 5.74** In discussing teacher education and training, the ongoing professional development of teachers featured heavily in evidence from stakeholders throughout the inquiry. While inquiry participants discussed the positive impact of recent reform to enhance teacher quality, a number of concerns were raised around funding and time constraints on professional development, the emphasis on online training, and participation rates in registered training courses relevant to students with disabilities and special needs.
- 5.75** As outlined earlier, teachers must engage in 100 hours of ongoing professional development over five years to maintain teacher accreditation. A range of courses are available, including a significant number of NESA registered courses focusing on teaching students with challenging behaviours, special needs or special education.⁶⁹⁹ The NSW Department of Education also offer a range of relevant courses, including a suite of seven specialist, tutor-supported online learning courses, also known as blended learning modules, in autism, behaviour, motor coordination, language and communication needs, dyslexia and reading difficulties, hearing loss, and personalised learning and support.⁷⁰⁰
- 5.76** Mr Martin, NESA, explained that teachers engage in courses based on their own self-identified need: ‘We allow teachers to identify and determine their own professional learning needs’.⁷⁰¹
- 5.77** Since the 2010 Upper House inquiry, the most significant developments in ongoing teacher training have come with the Every Student, Every School initiative. According to Mr Stephen Harris, Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education, increased focus on ‘building teacher capacity to teach every child within the class’ has been a ‘very significant philosophical change, and it has certainly changed cultures within public schools’.⁷⁰²

⁶⁹⁷ Evidence, Dr Gardon, 8 June 2017, p 28.

⁶⁹⁸ Answers to questions on notice, Witness D, 21 June 2017, p 2.

⁶⁹⁹ Evidence, Mr Martin, 23 June 2017, p 22.

⁷⁰⁰ Submission 135, NSW Government, p 59.

⁷⁰¹ Evidence, Mr Martin, 23 June 2017, p 22.

⁷⁰² Evidence, Mr Harris, 8 May 2017, p 42.

- 5.78** Indeed, the committee received evidence from the NSW Department of Education reflecting this change and expressed a commitment to creating a culture of improvement within the public education system – ‘that every student, every teacher and every school can improve’.⁷⁰³ Mr Scott, Secretary, NSW Department of Education explained that the expectation to improve is not limited to students and that teachers should be identifying areas of professional development for improvement and growth.⁷⁰⁴
- 5.79** While the inadequacy of teacher education and training remains a concern, as discussed earlier, a number of inquiry participants asserted that the recent emphasis on professional development has had a positive impact by lifting the general level of expertise amongst school staff. For example, Ms Robyn Christofides, teacher, discussed the effect of Every Student, Every School on teacher knowledge and skill:
- I think Every Student, Every School has really had an impact in lifting the level of expertise. When I first started working in special education a lot of people had limited training. Every Student, Every School has given people working as learning support teachers a much broader understanding of a range of disabilities and being able to cater for those in the mainstream classroom. I think it is also lifting the understanding of mainstream teachers to make adjustments and accommodations for students with disabilities in their classes... I do see some positives that are being created. I think the level of expertise in the whole profession and their orientation towards understanding the impact of disabilities on learning is growing.⁷⁰⁵
- 5.80** Some inquiry participants were particularly encouraged by the Professional Development Plan (PDP) process, with Ms Katrina Eyland, Principal, Havenlee School, and Ms Sheryl Bruffey, Principal, Budawang School, describing it as ‘fantastic’.⁷⁰⁶ Ms Sarah Rudling, Principal, Barrack Heights Public School, agreed, stating that the PDP process ‘has streamlined professional learning and really targeted individual learning for each teacher, which is fabulous’.⁷⁰⁷
- 5.81** Stakeholders repeatedly highlighted the importance of continuing professional development and the need to enhance and maintain teacher expertise as more and more students present with disability or special needs. For example, Ms Eyland, Havenlee School, stated that ongoing teacher training will always be critical because its objective is to improve educational outcomes:
- The whole point of professional learning is to improve student outcomes, and I think that is what we have to keep in mind, and that we always want the student outcomes to be the priority, but, unfortunately, sometimes it gets lost in the system.⁷⁰⁸
- 5.82** Likewise, Ms Robyn Christofides, teacher, expressed a similar view, stating ‘...it is all about building knowledge and expertise and understanding why we do what we do and what impact it has on the students’ learning’.⁷⁰⁹

⁷⁰³ Evidence, Mr Harris, 8 May 2017, p 42.

⁷⁰⁴ Evidence, Mr Scott, 23 June 2017, p 55.

⁷⁰⁵ Evidence, Ms Robyn Christofides, Teacher, 19 May 2017, p 8.

⁷⁰⁶ Evidence, Ms Katrina Eyland, Principal, Havenlee School, 19 May 2017, p 32; Evidence, Ms Sheryl Bruffey, Principal, Budawang School, 19 May 2017, p 32.

⁷⁰⁷ Evidence, Ms Sarah Rudling, Principal, Barrack Heights Public School, 19 May 2017, p 33.

⁷⁰⁸ Evidence, Ms Eyland, 19 May 2017, p 33.

- 5.83** Ms Rowena Perrit, Deputy National Director, Aspect Education, Autism Spectrum Australia, spoke of the need for more specific special education training, in particular, and used the example of autism to demonstrate the inadequacies of current mainstream school environments:

I think there is a need for special education training. A lot of our teachers in other organisations have general training so we need to focus a lot more on specific training for teachers within their practice and their pre-teaching placements in how to deal with different sorts of disabilities. In terms of autism, teachers need very specific training. A lot of our families are finding that their needs are not being met within a mainstream system because the staff do not have the ability to offer an individualised program and make sure that all their individual strengths and interests are being considered when they are looking at the different learning styles of students with autism.⁷¹⁰

- 5.84** According to Ms Catherine Lucas, Teacher, Rooty Hill High School, the need for professional development will only increase, as she reflected on the enrolment trends in her school:

We anticipate that the need for this professional development will only increase. We are noticing that the amount of students with disabilities, including those with mental health issues, as well as those with asthma and allergies and those living in out-of-home care, who enrol in our school is increasing.⁷¹¹

- 5.85** Despite moves to ensure that teachers are adequately trained during their service, the committee received evidence about a range of concerns and challenges faced by teachers in pursuing professional development.

Funding and time constraints

- 5.86** For many inquiry participants, the biggest constraints to teachers' professional development are money and time. The committee received substantial evidence suggesting that there are simply not enough resources to support teachers engaging in ongoing training.

- 5.87** For example, the NSW Secondary Principals' Council stated that 'there are limited financial resources to provide quality and adequate professional learning for staff to best support students with disabilities or special needs' given that there has been little increase to funding to teacher allocations since 2004 and that funds are now intended to support both teaching and non-teaching staff.⁷¹²

- 5.88** This was explained by Ms Anne Flint, Executive Member, Special Education Principals' and Leaders' Association, who stated that, despite an apparent increase in the recent funding allocation for professional development, policy change 'took the "teacher" out of Teacher Professional Learning and called it "professional learning funds"'.⁷¹³ Therefore, she informed,

⁷⁰⁹ Evidence, Ms Christofides, 19 May 2017, p 8.

⁷¹⁰ Evidence, Ms Rowena Perritt, Deputy National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 70.

⁷¹¹ Evidence, Ms Catherine Lucas, Teacher, Rooty Hill High School, 23 June 2017, pp 41-42.

⁷¹² Submission 121, NSW Secondary Principals' Council p 4.

⁷¹³ Evidence, Ms Anne Flint, Executive Member, Special Education Principals' and Leaders' Association, 27 March 2017, p 54.

‘that same bucket of funds applies to all non-teaching staff in schools as well... we have double the number of people to spread it across’.⁷¹⁴

- 5.89** Ms Katrina Eyland, Principal, Havenlee School, demonstrated this point with her school’s example. She argued that more funding support is needed if teachers are to engage in professional learning in the way the Department intends them to:

...there is a really good, strong focus on professional learning, and I think that is very needed and I think that is great. However, I would really like to see a little bit more support in being able to implement that, especially in SSPs, as we have just been given the PDPs for non-teaching staff as well as teaching staff. For instance, the professional learning budget for this year given to me is \$16,447 for Havenlee School. I have 30 staff. So that works out at \$548.23 for every staff member for professional learning for the year. I really applaud the department for valuing professional learning and putting a process in place for it to become formalised, but for us to be able to implement it properly I feel that we are letting our staff down.⁷¹⁵

- 5.90** The committee heard that these funding challenges are magnified for teachers located in regional areas. For example, Mr Brett Holland, a teacher from the far north of New South Wales, described the limited opportunities for professional learning in his area and the expenses incurred if teachers wanted to access these opportunities in Sydney:

Due to our geographical location, there are very few professional learning opportunities with experts close to our local schools. High-quality professional learning [PL] is more expensive for teachers in this area to access. All schools are allocated a PL budget, but we have the added expenses incurred in travel and accommodation in the centre of PL, Sydney.⁷¹⁶

- 5.91** Similarly, Ms Sarah Rudling, Principal, Barrack Height Public School, described the barriers to meeting the individual professional learning needs of her teachers being based outside of Sydney:

The difficulty in managing individual need is that many teachers in my school are teaching different cohorts of children. Therefore, in any particular year they might want to access professional learning. It does become a funding issue because to take off a class for the day is \$450 to replace them with a casual teacher, and that has fairly well expended your budget there, but that is not paying for the professional learning costs or, if it is a two-day course, the accommodation if they were to drive up to Sydney. It is quite a challenge to meet that.⁷¹⁷

- 5.92** Ms Carolynne Merchant, Director Public Schools NSW, Southern Tablelands Network, NSW Department of Education, acknowledged the difficulty for regional teachers to access professional development outside their locale, stating: ‘It can be hard, and if you go rural and regional it is even harder, because it is not taking one day to travel, and accommodation on top’.⁷¹⁸

⁷¹⁴ Evidence, Ms Flint, 27 March 2017, p 54.

⁷¹⁵ Evidence, Ms Eyland, 19 May 2017, pp 32-33.

⁷¹⁶ Evidence, Mr Brett Holland, teacher, 8 June 2017, p 2.

⁷¹⁷ Evidence, Ms Rudling, 19 May 2017, p 33.

⁷¹⁸ Evidence, Ms Carolynne Merchant, Director Public Schools NSW, Southern Tablelands Network, NSW Department of Education, 19 May 2017, p 40.

- 5.93** In the same way, Dr Lyn Gardon, Relieving Director School Services, NSW Department of Education, noted the costs associated with travelling from rural locations to undertake training.⁷¹⁹ However, Dr Gardon argued that the Department ‘would like to see it done differently rather than not – if people have to travel to a city’ and has therefore rolled out localised support so that school services teams can go to schools and provide the training.⁷²⁰
- 5.94** However, for many inquiry participants, this raises the issue of time. According to a number of teachers and schools, hand in hand with funding constraints are the constraints on teachers’ time to engage in ongoing training in special education, particularly given that teachers also have a number of other demands on their learning.
- 5.95** For example Ms Rudling, highlighted how funding limitations can impact on teachers’ time to engage in quality learning:

As far as teachers are concerned, it is not that they do not want to be professionally developed—again, good will comes into it a lot—but after a really complex and difficult day at school, because it is cheap you are required to stay back and do some training after hours, and that might go to 6 o’clock at night, just so that you can train your whole staff for a similar amount of money.⁷²¹

- 5.96** Likewise, for Guildford Public School, ‘time is a very large factor’ since often there is no additional funding for teacher release and so training must take place outside of school hours. They concluded: ‘Considering the hours most teachers work this is not feasible’.⁷²²
- 5.97** Ms Edwina Turner, Principal, The Crescent School, explained that in her school, as a School for Specific Purposes (SSP), all staff need to be trained in manual handling and nonviolent crisis intervention, among other mandatory requirements. With professional development on top of this, she stated there is simply ‘no time’.⁷²³
- 5.98** Others advised that the number of reforms introduced in recent years, such as the new national curriculum, have placed even more demands on teacher learning, making it difficult to prioritise special education training.
- 5.99** For example, Mr Chris Presland, President, NSW Secondary Principals Council explained the impact of recent curriculum changes on teachers’ time and professional learning:
- When we talk about professional learning for teachers—even for teachers aside from those involved in disability provision and so on—almost all of them are dealing with a new Australian curriculum that has been incorporated into the core business of the New South Wales syllabus. Almost every teacher is reworking their programs and relearning their curriculum materials for the new HSC and whatever else is brought in. That is just one part of professional learning, let alone the other things we are talking about today.⁷²⁴

⁷¹⁹ Evidence, Dr Gardon, 8 June 2017, p 28.

⁷²⁰ Evidence, Dr Gardon, 8 June 2017, p 29.

⁷²¹ Evidence, Ms Rudling, 19 May 2017, p 33.

⁷²² Submission 392, Guildford Public School, p 2.

⁷²³ Evidence, Ms Turner, 19 May 2017, p 33.

⁷²⁴ Evidence, Mr Presland, 27 March 2017, p 54.

- 5.100** Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals Association, supported this view, advising that there is ‘a lot of training happening in schools’ already:

Our teachers each did more [than]110 hours last year. That includes after school and staff development days. It is more complex. As you said, there is a new curriculum, but there is also the complexity of students coming through and differentiation within the new curriculum. Could we do more? We would love to.⁷²⁵

- 5.101** This was recognised by Ms Mandy Shaw, Director, Public Schools NSW, Wollongong Network, NSW Department of Education, who acknowledged that teachers are ‘pretty busy with the agendas that already exist in terms of training that they need’.⁷²⁶

- 5.102** To find ways around these funding and time constraints, the committee received evidence that more and more schools are managing their professional learning by taking a whole-school approach to delivering training.

- 5.103** For example, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, advised of a shift in the way professional development is being engaged by schools:

The other thing that has shifted in time is the number of schools where the principal decides that they will arrange for one of these training courses, or multiple courses to be run at a whole school level. When we first introduced these courses they were predominantly taken by individuals who came together at different points across the State. As they became more familiar and people were aware of what they could deliver we have many more schools who are doing it at a whole school level. The autism course, in particular, is the one that has a fairly high rate of whole school delivery of the training as opposed to training in a location that various people from different schools will come to.⁷²⁷

- 5.104** Ms Meredith Fawcett, Executive Member, NSW Secondary Principals’ Council, demonstrated this point, advising the committee that her school managed their funds in such a way so as to provide access for all staff to the online training course in Autism:

It depends on how you structure the use of professional learning funds. For example, there are online courses, including one on autism. Our entire school did that course. There would be schools that involve the entire staff in that online resource. It involves tutors, but it depends on how you manage the funds.⁷²⁸

- 5.105** Ms Merchant, NSW Department of Education, added that schools are now conducting staff meetings in such a way to provide professional learning: ‘A lot of schools have changed the way they have their staff meetings, so rather than just being a giving of information they use

⁷²⁵ Evidence, Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals Association, 27 March 2017, p 54.

⁷²⁶ Evidence, Ms Mandy Shaw, Director Public Schools NSW, Wollongong Network, NSW Department of Education, 19 May 2017, p 43.

⁷²⁷ Evidence, Ms Clements, 23 June 2017, p 55.

⁷²⁸ Evidence, Ms Fawcett, 27 March 2017, p 54.

some of that as professional learning time as well.⁷²⁹ This was echoed by Ms Shaw, NSW Department of Education, who stated that this is ‘common practice now, particularly in primary schools, to do that so that they can do a lot of work around literacy and numeracy’.⁷³⁰

Online training courses

5.106 A number of inquiry participants also raised concerns about the overemphasis on e-learning and online training courses to meet the professional development needs of teachers.⁷³¹

5.107 For example, Ms Rudling, Principal, Barrack Heights Public School, commented on the ‘volume of professional learning that seems to come through as e-learning’ and questioned the value and effectiveness of engaging professional development in this way, stating that ‘e-learning is not best practice by any stretch of the imagination’. Ms Rudling argued:

We are humans—we need to talk and communicate and gauge each other’s needs. To go and sit in front of a computer screen and to do some learning, in my mind does not qualify you to be then anywhere near the level of expert that you need to be on autism or dyslexia or all of those things.⁷³²

5.108 In their submission, Barrack Heights Public School added that ‘online training programs are inadequate and inappropriate’, stating that ‘they offer the same training for all regardless of an individual teacher’s skills and expertise. Teachers’ perceive the online training as a “taster”-lacking in depth of knowledge’.⁷³³

5.109 South Western Sydney Primary Principals expressed a similar view, stating that online learning varies in quality from ‘limited to poor’.⁷³⁴

5.110 Avalon Public School asserted that online training programs can be valuable, however, ‘sometimes more support is needed than can be accomplished through the use of on-line materials’. They also argued that ‘not all teachers are free to access these materials after working hours’.⁷³⁵

5.111 Likewise, Mr Wayne Donovan maintained that online training is time consuming and encouraged to be completed outside of school hours. He called for more face-to-face professional learning to be offered instead:

Another issue is the lack of funding available to enable schools to offer effective face to face professional learning. A lot of training is currently done online, which is time consuming and often encouraged to be done in their own time (which is not fair). Given the obligations under the Disability Standards are mandatory, then teachers

⁷²⁹ Evidence, Ms Merchant, 19 May 2017, p 44.

⁷³⁰ Evidence, Ms Shaw, 19 May 2017, p 44.

⁷³¹ For example, Submission 5, Ms Janine Agzarian, p 2; Submission 70, Name suppressed, p 1.

⁷³² Evidence, Ms Rudling, 19 May 2017, p 33.

⁷³³ Submission 373, Barrack Heights Public School p 2.

⁷³⁴ Submission 168, South Western Sydney Primary Principals, p 13.

⁷³⁵ Submission 217, Avalon Public School, p 2.

should be given time during school hours, to access training, expertise and ongoing support to meet these obligations.⁷³⁶

Participation rates

- 5.112** The uptake of professional development courses relating to disability and special needs was also discussed during the inquiry, although mixed evidence was received about the actual number of teachers engaging in such training.
- 5.113** Mr Paul Martin, Executive Director, Quality Teaching, NSW Education Standards Authority, advised the committee that, between 2013 and 2017, approximately 6,000 teachers – out of 40,000 teachers across the State – participated in NESA-registered courses relating to special education.⁷³⁷ Mr Martin suggested that such rates indicate a ‘lack of understanding of [teachers’] need for special education’.⁷³⁸
- 5.114** However, the NSW Department of Education advised that their course registrations for the seven blended learning modules specific to supporting the needs of students with disability represent ‘more than 21,000 individual staff in NSW public schools which have taken one or more courses, including classroom teachers, specialist teachers, principals and school Executive, school learning support officers and local Educational Services staff’.⁷³⁹ Of this number, it is not clear how many are actual teaching staff.

Should special education training be mandatory?

- 5.115** In discussing the ongoing professional development of teachers, questions were raised about whether teacher training in special education should be made mandatory.
- 5.116** Mr Paul Martin, Executive Director, Quality Teaching, NESA, explained that teachers must undertake training in each of the seven elements under the Australian Professional Standards for Teachers, and that special education is embedded across the training for each of these elements. He explained the basis for this in that ‘the arguments over the last decade or so have been that all aspects of teachers’ work should have regard to special education’.⁷⁴⁰
- 5.117** Mr Martin advised, that while NESA could register courses and ensure fair distribution of training opportunities across the state, it did not have the authority to mandate professional development in special education, explaining:

NESA does not employ teachers or run schools, so the ‘you must’ can only come from employing authorities or a directive from the Minister who then directs the employing authorities from within the department. We are not in a position to say this is mandatory PD [professional development].⁷⁴¹

⁷³⁶ Submission 320, Mr Waine Donovan, pp 1-2.

⁷³⁷ Evidence, Mr Martin, 23 June 2017, p 23.

⁷³⁸ Evidence, Mr Martin, 23 June 2017, p 23.

⁷³⁹ Answers to questions on notice, NSW Department of Education, 14 June 2017, p 14.

⁷⁴⁰ Evidence, Mr Martin, 23 June 2017, p 24.

⁷⁴¹ Evidence, Mr Martin, 23 June 2017, p 23.

- 5.118** Mr Mark Scott, Secretary, NSW Department of Education, addressed the issue of mandatory special education training by advising that the Department does not require training in this area because ‘our advice actually is about how to best create the learning culture’.⁷⁴² According to Mr Scott, the best way to create the learning culture is ‘for these courses to be on offer, for people to do them, and for people then to share their expertise in the system, and for people to be able to talk up the courses that are on offer’.⁷⁴³
- 5.119** However, for some inquiry participants, such as Dr Laura Issa, providing teachers with the option to undertake special education training, rather than require it, is ‘inadequate and unsatisfactory’⁷⁴⁴ given the growing diversity of student need, whether formally diagnosed or not, within a classroom. Teachers equally expressed the view that ‘[e]very teacher or support staff should have experience or training in working with students with special needs. Too many staff are untrained and are not [at] all ready to meet the individual needs of students and this compounds the issue for the staff and the students.’⁷⁴⁵
- 5.120** A number of inquiry participants argued that, while training is necessary and valuable, more important than the training itself is the ongoing guidance and support provided to teachers to enhance their knowledge and skills.
- 5.121** For example, Ms Diane Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals Association, discussed the importance of mentoring and supporting staff, asserting that ‘sending a teacher to do a one-off course can have limited benefits’.⁷⁴⁶ Ms Robertson encouraged engagement and dialogue: ‘Often we need to look at the student and reflect on how they are going, talk to colleagues, then again reflect on a change in practices, and then continue that process’. She advocated for funding support for mentoring, stating:
- It would be a great asset to have that level of funding through professional learning to support ongoing mentoring to make pedagogical changes that change the lives of children in the classroom.⁷⁴⁷
- 5.122** Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, also highlighted the need for ongoing teacher support through the example of a graduate teacher who she taught:

I remember a very talented student of mine many years ago—one of my top students—got a position in quite a difficult western New South Wales region. The problem is when you send a new graduate into that sort of environment where there is no proper support and no valuing of what she has to offer. She resigned from teaching after about a year because it was just so difficult for her. We need to support those people. You cannot put one-offs into difficult positions.⁷⁴⁸

⁷⁴² Evidence, Mr Scott, 23 June 2017, p 55.

⁷⁴³ Evidence, Mr Scott, 23 June 2017, p 55.

⁷⁴⁴ Evidence, Dr Issa, 27 March 2017, p 32.

⁷⁴⁵ Submission 378, Name suppressed, p 3.

⁷⁴⁶ Evidence, Ms Robertson, 27 March 2017, p 55.

⁷⁴⁷ Evidence, Ms Robertson, 27 March 2017, p 54.

⁷⁴⁸ Evidence, Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, 3 April 2017, p 28.

Committee comment

- 5.123** The committee acknowledges that while inquiry participants discussed the positive impact of recent reforms to enhance teacher quality, principals and teachers remain concerned about funding and time constraints on professional development. The main method that enables teachers to participate in professional development is through teacher release time. The committee is of the view that, in order to ensure teachers are and feel equipped to support students with disability and special needs, teachers need to undertake professional development in this field. This can be achieved by additional teacher release time. Therefore, the committee recommends that the NSW Department of Education resource the increase of teacher release time to allow for professional development in special education.
- 5.124** The committee heard that there are additional constraints faced by teachers in regional schools and whilst online training and other mechanisms are available to access professional development in the regions, the committee believes more should be done. We recommend that the NSW Government increase professional development funding allocations for regional schools.

Recommendation 31

That the NSW Department of Education, in relation to professional development in special education:

- resource the increase of teacher release time
 - increase funding allocations for regional schools.
-

Principal quality and school leadership

- 5.125** In addition to teacher training and education, principal quality and school leadership was identified as a key factor in producing positive educational outcomes and experiences for students with disabilities and special needs. In particular, the committee heard that the impact of principals is wide reaching, bearing influence on staff, school culture, resourcing and ultimately, quality of education. This is especially the case under the Local Schools, Local Decisions initiative which gives principals the authority to expend school funds to meet the needs of their students.⁷⁴⁹ Given their leadership role, inquiry participants stressed the need for adequate principal training, preparation and support.
- 5.126** According to one inquiry participant, ‘principals are demigods. They have carte blanche authority over so many areas’.⁷⁵⁰ Indeed, a number of stakeholders talked about the huge, if not excessive, discretionary powers of principals over funding and resources, direction of teaching and non-teaching staff, implementation and interpretation of policy, and the outcomes and supports to be provided to students with disabilities and special needs.⁷⁵¹

⁷⁴⁹ Submission 135, NSW Government, p 30.

⁷⁵⁰ *In camera* evidence, Witness D, 19 May 2017, p 5, published by resolution of the committee.

⁷⁵¹ For example, Evidence, Ms Kate Finch, Manager, Systemic Advocacy, People with Disability Australia, 3 April 2017, p 42; *In camera* evidence, Witness C, 19 May 2017, p 4, published by resolution of the committee; see also Chapter 3.

- 5.127** For example, Ms Allison Gentle, teacher, asserted that ‘there is a lot discretion of principals to spend the money as they see fit and to implement their own priorities’,⁷⁵² while another inquiry participant argued that principals have ‘too much decision-making discretion in regards to how DES [Disability Standards for Education] principles are applied in their school’.⁷⁵³
- 5.128** Because of this power, the committee heard that the quality of a school is very much determined by the quality of its leaders. As Mr David Roy, parent and academic, declared: ‘Show me a good school and I will show you a good principal. That is what is behind any organisation; it is from leadership’.⁷⁵⁴
- 5.129** Conversely, a number of inquiry participants shared this view by highlighting the inadequacies of principals that have in turn impacted on their staff and students.⁷⁵⁵ For example, Dr Melanie Heyworth, parent, talked about her experience of schools where teachers have not met expectations because ‘there is not enough leadership from principals around these things’. She argued that ‘if we want teachers to be doing their job, it needs to come from the principal’.⁷⁵⁶
- 5.130** Mrs Gina Wilson-Burns described the direct and profound impact of the principal on the quality of her son’s education and learning outcomes. She advised that her son, who was once a ‘best practice’ example of inclusive education, is now socially isolated and is being denied meaningful academic participation’, arguing that ‘[T]his is nothing to do with the funding or the laws and everything to do with the leadership and the culture that leader has fostered at a given school’.⁷⁵⁷
- 5.131** Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, reflected the evidence received in this inquiry, advising that in the NSW Ombudsman’s report, ‘from parents, academics and coalface educators we heard over and over again how skilled leadership is critical to whether a genuinely inclusive education is being provided to students with disabilities as well as students with challenging behaviour and complex needs’.⁷⁵⁸
- 5.132** As such, a number of inquiry participants called for the training of principals in addressing the needs and supporting students with disability, and in their legal obligations particularly under the Disability Standards for Education. As outlined earlier in the chapter, such obligations are mandatory but the training in them is not. The need for training at this level is both ‘astounding and deeply disappointing’ for Dr Heyworth, who stated:

If the principals are making these decisions then they need to be educated in how to make them. You have to make knowledgeable decisions. If you make decisions out of ignorance, that is not excusable. .. if we are not training our principals in how to meet

⁷⁵² Evidence, Ms Gentle, 23 June 2017, p 37.

⁷⁵³ Submission 194, Name suppressed, p 2.

⁷⁵⁴ Evidence, Mr Roy, 27 March 2017, p 32.

⁷⁵⁵ For example, Evidence, Ms Alex Baltins, Member, Children and Young People with Disability Australia, 3 April 2017, p 53; Submission 207, Name suppressed, p 8; Submission 113, Name suppressed, p 5.

⁷⁵⁶ Evidence, Dr Melanie Heyworth, Parent, 27 March 2017, p 32.

⁷⁵⁷ Submission 173, Mrs Gina Wilson-Burnes, p 1.

⁷⁵⁸ Evidence, Mr Kinmond, 11 August 2017, p 2.

those needs, how are our teachers expected to follow through if there is no leadership around that? I think it is both astounding and deeply disappointing.⁷⁵⁹

- 5.133** Likewise, evidence received by the committee suggested resource allocation decisions, made under the greater discretionary powers assumed by principals under Local Schools, Local Decisions, were not driven by accountable financial management practices or principles but by schools being ‘creative’ with their available funds, which Mr Kinmond argued should be systemically captured and promoted.⁷⁶⁰ The Local Schools, Local Decisions initiative, is outlined further in Chapter 3.
- 5.134** The NSW Department of Education advised that schools have access to professional learning to ‘build the capabilities needed to operate in the new budgeting environment’, including core financial literacy and strategic financial management courses, but confirmed that training in this area is not compulsory.⁷⁶¹ Mr Scott, Secretary, NSW Department of Education, did note that the current review of the resource allocation model (RAM) in schools will include ensuring that principals understand their responsibilities and accountabilities to students with disabilities and special needs.⁷⁶²
- 5.135** With training needs such as these, inquiry participants spoke more broadly about principal preparation and how there is much room for improvement in identifying, building and supporting quality leadership. For example, Mr Chris Presland, President, NSW Secondary Principals’ Council, advised that historically the approach to principals has been around principal ‘induction’ rather than ‘preparation’ at which point there are many pressures on a principal to know what they need to do.⁷⁶³
- 5.136** Mr Matthew Johnson, Vice President, Special Education Principals and Leaders Association, agreed, explaining that currently ‘you apply and then you get ready for the job’.⁷⁶⁴ He drew comparisons with the corporate sector where he stated it is done ‘really well’: ‘...identifying people, growing them and nurturing them over time and they are ready for the job’ before they get it.⁷⁶⁵
- 5.137** Similarly, Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals’ Association, argued that potential principals should be identified by directors and existing leadership so they can be encouraged and supported to attain principal credentials rather than relying on self-identification. While acknowledging that mentorships exist, Mr McLeod advocated for a more formal process ‘to get the right people in the right job’:

I think that we have to choose the right principals—that we tap them on the shoulder and encourage them; that we identify. Because at the moment it is self-identification if you want to be a principal. You have to self-identify, obviously, as in all jobs, but I

⁷⁵⁹ Evidence, Dr Heyworth, 27 March 2017, p 32.

⁷⁶⁰ Evidence, Mr Kinmond, 11 August 2017, p 11.

⁷⁶¹ Answers to questions on notice, NSW Department of Education, 21 April 2017, p 17.

⁷⁶² Evidence, Mr Scott, 23 June 2017, p 54.

⁷⁶³ Evidence, Mr Presland, 27 March 2017, p 44.

⁷⁶⁴ Evidence, Mr Matthew Johnson, Vice President, Special Education Principals’ and Leaders’ Association, 27 March 2017, p 43.

⁷⁶⁵ Evidence, Mr Johnson, 27 March 2017, p 43.

think it is really important that we and directors start identifying people. We do, but it should be a formal process. We should identify those people and get them through the principal credentials and support them on the job. There are mentors now, which is good... but I think that is a part on which we need to follow up and really focus on...⁷⁶⁶

- 5.138** Some stakeholders suggested ways in which leadership could be developed, encouraged and sustained to ensure the effective delivery of quality learning. For example, principals, such as Mr Johnson and Mr Presland, recommended a principal preparation program involving both an academic and internship-type arrangement where one can ‘buddy up’ with a principal over time.⁷⁶⁷ Moreover, the NSW Secondary Principals Council added that such a program would reference and ensure that the Australian Professional Standard for Principals is met through strategies that reflect best practice for professional growth, including structured networking and supporting partnership like mentoring, online access to information and an exchange of ideas, and workplace opportunities.⁷⁶⁸
- 5.139** Ms Gentle, a specialist teacher, also suggested that executive positions could require experience in a learning support role, whether that be in supporting students with disability or students with English as an additional language. She explained:
- If it was a condition of moving into an executive position that a teacher, say, has two years experience in a learning support role, I think that would, over time, increase the depth of knowledge among school executives about issues around learning support and students with disability.⁷⁶⁹
- 5.140** The committee also received evidence on the increasing budgetary and local leadership obligations on principals and how these demands are making it challenging for principals to meet their responsibilities effectively. For example, some such as Ms Diane Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals’ Association, acknowledged that principal workload has increased significantly but not the time to manage it.⁷⁷⁰
- 5.141** Similarly, Ms Merchant and Ms Mandy Shaw, Department of Education, both acknowledged that, as directors, their principals are overloaded and advised they were seeking to address this by having discussions about what could be ‘dropped off’ or passed on to someone else so they ‘can actually concentrate on what they are doing educationally’.⁷⁷¹
- 5.142** Ms Merchant discussed the idea of schools employing a business manager who could manage more administrative responsibilities, which was supported by other inquiry participants such as Mr McLeod, NSW Primary Principals’ Association, who stated: ‘A business manager would be very nice’.⁷⁷²

⁷⁶⁶ Evidence, Mr McLeod, 27 March 2017, p 43.

⁷⁶⁷ Evidence, Mr Johnson, 27 March 2017, p 44; Evidence, Mr Presland, 27 March 2017, p 44.

⁷⁶⁸ Answers to questions on notice, NSW Secondary Principals’ Council, Attachment B, School Leadership Development in NSW Government Schools – Policy Statement, 20 April 2017, p 2.

⁷⁶⁹ Evidence, Ms Gentle, 23 June 2017, p 33.

⁷⁷⁰ Evidence, Ms Robertson, 27 March 2017, p 48.

⁷⁷¹ Evidence, Ms Shaw, 19 May 2017, p 46.

⁷⁷² Evidence, Mr McLeod, 27 March 2017, p 44.

- 5.143** Witness D also recommended a general manager-type role in schools to ‘support principals in getting back into the classrooms to ensure that students are excelling’.⁷⁷³ Witness D asserted that such a role could manage a range of matters, including ‘finances, school maintenance, low-level community and staffing concerns, employment of casual teachers, allocation of RFF [Release from Face to Face] for staff, WHS [Workplace Health and Safety] matters...’.⁷⁷⁴
- 5.144** Another issue discussed by inquiry participants around school leadership related to executive staffing arrangements in schools, in particular at mainstreams schools with large support units.
- 5.145** For example, the NSW Teachers Federation advised of reports that some support units in mainstream schools are growing and becoming unmanageable because they do not attract additional staffing through the Executive Entitlement. They stated: ‘Some Support Units across the state have been reported as being as large as Schools for Specific Purposes (SSPs) but running with less administrative, staffing and funding support’.⁷⁷⁵
- 5.146** The Federation highlighted the impact of this anomaly, asserting that ‘the shortfall in executive positions in these situations has a negative effect on the schools capacity to effectively meet student needs’.⁷⁷⁶ They explained:
- An insufficient number of executive positions increases workload for the classroom teachers and executives currently appointed to these settings and inhibits the capacity of the school to maximise learning outcomes for students with disability.
- 5.147** Sir Joseph Banks High School demonstrated this point, advising that the support unit within their mainstream setting operates like a school in a special setting but does not receive the funding or resources that other local special schools receive. In comparing staff allocations, in particular, Sir Joseph Banks High School argued that there is a ‘huge disparity’ between the leadership, teaching and support staff provided across the schools. They advised that the local special schools are serviced by a principal and two assistant principals each, in addition to teaching and support staff, where the Sir Joseph Banks support unit has neither a principal or assistant principal allocation for a comparable number of students.⁷⁷⁷

Committee comment

- 5.148** The committee acknowledges that skilled leadership is critical to ensure a genuinely inclusive education is provided to students with disabilities and special needs. For this reason it is critically important that principals have the necessary leadership skills and training to promote an inclusive environment. This is why we have recommended that principals undertake mandatory training in their legal obligations and the Disability Standards for Education earlier in this chapter.
- 5.149** In addition, with the changes associated with ESES and Local Schools Local Decisions initiatives it is also vitally important that principals have or develop the capabilities needed to

⁷⁷³ Answers to questions on notice, Witness D, 21 June 2017, p 3.

⁷⁷⁴ Answers to questions on notice, Witness D, 21 June 2017, p 3.

⁷⁷⁵ Submission 143, Australian Education Union, NSW Teachers Federation Branch, p 14.

⁷⁷⁶ Answers to questions on notice, NSW Teachers Federation, 8 May 2017, p 4.

⁷⁷⁷ Submission 206, Sir Joseph Banks High School, p 3.

operate in the new budgeting environment. The committee notes that financial management courses are available for principals but are not compulsory. While appreciating the time constraints on principals, the committee believes financial management training should be mandatory.

- 5.150** We also note suggestions from inquiry participants, including principal groups, to explore a formal process to identify and mentor potential principal, the establishment of a principal preparation program and the idea of schools employing a business manager. The committee considers that there is merit in investigating these proposals and recommends that the NSW Government consider them.
- 5.151** We note that in Chapter 3 we have recommended that a review of funding and staffing allocations be undertaken for specialised settings, such as SSPs.
- 5.152** The committee acknowledges the recent announcement by the Hon Rob Stokes MP, Minister for Education, to allocate an extra \$50 million per year for government schools as part of a new School Leadership Strategy focussed on enhancing the role of principals as instructional leaders.⁷⁷⁸ The committee notes that the strategy will be implemented progressively over the next 18 months and encourages the NSW Government to consider the committee's recommendations in relation to principals in light of the new strategy.

Recommendation 32

That the NSW Department of Education make it mandatory for principals to undertake financial management training.

Recommendation 33

That the NSW Department of Education investigate formal processes to identify and mentor potential principals and the establishment of a principal preparation program.

Recommendation 34

That the NSW Department of Education consider the feasibility of establishing a business manager position in schools.

Special education teachers

- 5.153** During the inquiry, the nature and role of special education teachers across mainstream and specialised school settings was also raised. In particular, inquiry participants discussed the impact of merging former itinerant support positions into a single specialist teacher position. Inquiry participants also commented on the qualifications of special education teachers and considered whether such qualifications should be made mandatory.

⁷⁷⁸ Mr Bruce McDougall, 'Taking it back to the old school', *Daily Telegraph*, 11 September 2017, pp4-5 and Mr Mark Scott's Update, Secretary, Department of Education, <www.dec.nsw.gov.au/about-us/key-people/mark-scott-s-update/school-leadership-strategy>.

Learning and Support Teachers

- 5.154** During the 2010 Upper House inquiry, a new model of support for students with disabilities and special needs in mainstream classes, known as the School Learning Support Program, was introduced. A key feature of the program was the merging of existing specialist and support teacher positions into a single specialist teacher role. The program was to later inform much of what is found in the Every Student, Every School policy today.
- 5.155** Indeed, the current Learning and Support Teacher (LAST) position was established in 2012 following the reorganisation and amalgamation of a number of programs and roles that were not formerly available in every school, including support teacher positions, and itinerant and outreach teachers in support, behaviour, integration and special education (autism and emotional disturbance).⁷⁷⁹
- 5.156** In their submission, the NSW Government advised that an important outcome of this initiative is that every regular school now has a specialist Learning and Support Teacher allocation, with over 400 government schools receiving a specialist teacher allocation for the first time.⁷⁸⁰
- 5.157** Many inquiry participants raised concerns about the collapsing of these multiple specialist itinerant and support positions into the LAST, arguing that there has been a significant loss of expertise in the process with teachers being expected to have knowledge across a far broader range of disabilities and needs.⁷⁸¹ For example, one inquiry participant asserted that ‘in the past, specialist teachers filled these positions and brought with them a wealth of professional knowledge, often gained through tertiary studies in specialist field’. They stated that now, ‘increasingly, these teachers are not available and their specialisation and skills are lost to the system’.⁷⁸²
- 5.158** This view was reflected by Mr Brett Holland, who is employed as a 0.9 LAST and 0.1 classroom teacher with qualifications in Autism Studies. Mr Holland argued that his specialist knowledge and skills are ‘underutilised’: ‘I could be utilised across a number of schools consulting on strategies for students on the autism spectrum’.⁷⁸³
- 5.159** Guilford Public School explained the impact on LASTs themselves, with stresses arising out of the need to develop the skills and knowledge for the position ‘without time and adequate training to support students outside their sphere of expertise’.⁷⁸⁴ They used the example of teachers who are trained to support students with learning difficulties now being expected to support students with behavioural difficulties without having any qualifications.⁷⁸⁵

⁷⁷⁹ Answers to questions on notice, NSW Department of Education, 14 June 2017, p 8.

⁷⁸⁰ Submission 135, NSW Government, p 19.

⁷⁸¹ For example, Submission 349, Name suppressed, p 2; Evidence, Mr Jack Galvin Waight, Teacher, 8 May 2017, p 5; Submission 344, Homebush Public School, p 1; Submission 403, James Meehan High School, p 2.

⁷⁸² Submission 274, Name suppressed, p 1.

⁷⁸³ Evidence, Mr Holland, 8 June 2017, p 2.

⁷⁸⁴ Submission 392, Guildford Public School, p 2.

⁷⁸⁵ Submission 392, Guildford Public School, p 2.

- 5.160** Other inquiry participants commented on the dilution of the role, with some suggesting that these positions are often temporary, perceived to be one that exists to ‘cover classes’, and are filled by ‘whatever casual teacher is available to teach students with disabilities’.⁷⁸⁶
- 5.161** The concerns around the impact of merging specialist roles into a single Learning and Support Teacher position are demonstrated in the case study below.

Case study – A Learning and Support Teacher’s perspective:

The support for students with disability in regular classrooms is also being steadily eroded by an inadequate level of specialist teacher presence in my workplace because the full time Learning and Support teacher position has not been filled by a specialist i.e. The support they provide students is timely but it is not specialised because the temporary teachers who have been appointed have not had the necessary qualifications or experience in doing so. The implementation of ESES and the subsequent removal of the framework has often left our LST struggling to meet the additional needs of the number of students referred by class teachers for support.

I want to put on record to the Committee that some LaSTs were allocated to more than one school even though they, like me, were previously full time, permanent specialist itinerant teachers based in one school. In my case I was told at the time of allocation that I could not change that decision when I raised my concern at the time. For me that has a significant impact on my workload, the way that I am perceived in this post ESES era by my colleagues who do not understand the specialised role of the LaST, my career aspirations and my own sense of professional worth. I have always defined my job as making a positive difference to students’ lives by improving their learning and well being outcomes. It is frustrating and, at times, stressful, to be perceived as either a visiting, part time teacher who is somehow a lesser teacher because I do not teach a regular class. I know I have a Masters In Special Education and over 20 years experience to draw on but, it seems it is of no value to many of my colleagues who do not understand the potential difference this expertise can make to their attempts to teach the students in their class. The very broad guidelines of the role of the LaST are not helpful because they can be interpreted to mean a range of roles.

From my personal perspective, the roll-out of the ESES and the subsequent withdrawal of the Department’s commitment to the framework, combined with the introduction of Local Schools Local Decisions, has been an ongoing demoralising experience. It is an opportunity lost!⁷⁸⁷

Formal qualifications for special education teachers

- 5.162** A number of stakeholders raised the issue of special education teachers being adequately and appropriately qualified for their role. On the one hand, inquiry participants argued that a formal special education qualification should be made mandatory for any teacher occupying a specialist position. On the other, others argued that there are many special education teachers with extensive experience and skills that are successfully meeting the needs of their students and providing quality education without a formal qualification.

⁷⁸⁶ For example, Submission 274, Name suppressed, p 1; Submission 180, Ms Allison Gentle, p 2; Submission 376, Name suppressed p 2.

⁷⁸⁷ Submission 376, Name suppressed, pp 2-3.

- 5.163** According to Dr Carter, Macquarie University, ‘providing high quality special education programs involves specialist skills and knowledge’.⁷⁸⁸ As such, Dr Carter argued that all special education positions, including Learning and Support Teachers, should have formal qualifications involving ‘at least one year equivalent full-time training, rigorous assessment and supervised practicum’.⁷⁸⁹
- 5.164** A number of academics agreed with this position, with Dr O’Neill asserting that currently there is this ‘grey area’ around who can be a special education teacher:
- If you look at any of the advertisements for special education positions it is qualifications and/or experience. Depending on the position, where it is and what it entails, we cannot guarantee who will come forward to put their hand up for that position. It may well be someone with very little experience or perhaps someone who has done a couple of elective courses during their pre-service teacher education. That is what we are talking about; we have this grey area for who can be a special education teacher.⁷⁹⁰
- 5.165** By comparison, Dr Iva Strnadova, Associate Professor in Special Education, School of Education, University of New South Wales, drew attention to requirements internationally, where special education qualifications are mandatory for employment.⁷⁹¹ Dr Strnadova also noted the lack of clarity around how many teachers currently hold qualifications in special education, noting that recent research indicated 40 per cent of special educators did not hold special education qualifications.
- 5.166** For Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University, the need for qualified special education teachers is dire, telling the committee that she has ‘seen the tragedy of what can go wrong when a person does not know what they are doing’. She remarked: ‘If you have a whole school where not one person is qualified in special education then it is not surprising that things go wrong and people get hurt’.⁷⁹²
- 5.167** However, special educators, such as Ms Megan McQueen, teacher at Wilson Park School, a School for Specific Purposes, strongly argued against the idea that formal qualifications are a necessity. She advised that not all teachers at her school had formal training in special education, and yet she stated: ‘I would challenge you to walk into my school and pick the ones that were, based on the quality of teaching that is going on in the school itself’.⁷⁹³
- 5.168** Ms McQueen highlighted the skills acquired over time and experience, having worked with students of various disabilities and matching their needs. She argued that formal qualifications cannot account for every variation under every diagnosis, stating:

I feel that Special Education teachers do a very good job of leading the needs of all students, regardless of their disability, because one of our key factors is, we work with

⁷⁸⁸ Evidence, Dr Carter, 3 April 2017, p 20.

⁷⁸⁹ Evidence, Dr Carter, 3 April 2017, p 20.

⁷⁹⁰ Evidence, Dr O’Neill, 3 April 2017, p 27.

⁷⁹¹ Evidence, Dr Iva Strnadova, Associate Professor in Special Education, School of Education, University of New South Wales, 3 April 2017, p 27.

⁷⁹² Evidence, Dr Kemp, 3 April 2017, p 27.

⁷⁹³ Evidence, Ms Megan McQueen, Teacher, 8 June 2017, p 6.

students with who they are and what their individual needs are, more than their actual label of what their disability is...Special ed teacher training does not equip me to work with every student with autism or every student with cerebral palsy.⁷⁹⁴

Committee comment

- 5.169** It is noted that this issue was raised in the 2010 Upper House inquiry, with a recommendation that all school learning and support teams include at least one member with a special education qualification. At the time, the NSW Government did not provide a direct response to this recommendation.
- 5.170** The committee acknowledges that both experience and formal qualifications are important for special education teachers. We also note the concerns raised by some Learning and Support Teachers regarding the need for training to support students outside their original sphere of expertise. We recommend that the NSW Department of Education work towards having all Learning and Support Teachers with appropriate special education qualifications to support the range of disabilities and special need presenting in schools.

Recommendation 35

That the NSW Department of Education work towards having all Learning and Support Teachers with appropriate special education qualifications to support the range of disabilities and special need presenting in schools.

School Learning Support Officers

- 5.171** The role and expectations of School Learning Support Officers (SLSOs), formerly known as teacher's aides, was also considered in the current inquiry.
- 5.172** According to Mr David Roy, SLSOs represent 'the least pedagogically qualified within the classroom being given responsibility for the most pedagogically needful child'.⁷⁹⁵ Indeed, a number of inquiry participants characterised SLSOs in this way.⁷⁹⁶
- 5.173** In particular, many spoke of the role often expected of and assigned to SLSOs as 'babysitters'.⁷⁹⁷ For example, Ms Carole Barnes, academic and advocate, stated that in busy mainstream classes, SLSOs are often asked to look after students with disability by 'keeping them quiet':

What we hear most often is that the child is supported in the classroom by the teacher who is very, very busy because they have all these children in one classroom and they all have varying needs... so they get them a teacher aide. So what we do is we take the

⁷⁹⁴ Evidence, Ms McQueen, 8 June 2017, p 6.

⁷⁹⁵ Evidence, Mr Roy, 27 March 2017, p 27.

⁷⁹⁶ For example, Ms Leiton, 3 April 2017, p 12; Ms Barnes, 3 April 2017, p 30; Submission 113, Name suppressed, p 5.

⁷⁹⁷ For example, Evidence, Ms Leiton, 3 April 2017, p 12; Submission 113, Name suppressed, p 5.

adults with the least specialised training and we give them to the children with the greatest needs. Most of these people are very well intentioned and they want to do the very best they can, but they are told by the classroom teacher, ‘Your job is to keep him quiet’.⁷⁹⁸

- 5.174** Dr Melanie Heyworth, a parent, expressed a similar point, telling the committee that when her son was allocated an SLSO, he did not learn – it became a ‘babysitting service’:

He did not learn to read or to write or do any of those basic things and it feeds into the soft bigotry of low expectations that schools have for our children with disabilities.⁷⁹⁹

- 5.175** Dr Heyworth argued that by allocating her son an SLSO, teachers could effectively ‘abdicate responsibility for teaching my child’, where in fact she asserted ‘our children will never achieve what they could achieve unless teachers take responsibility for teaching them’.⁸⁰⁰ She stated: ‘It is the teachers who have the training to teach. The teachers’ aides do not have that. They are great support mechanisms, but they should not be used as babysitters...’.⁸⁰¹

- 5.176** This view was shared by another parent, Ms Caroline Thornton, who maintained that sending her son to school ‘is not a glorified babysitting service’.⁸⁰² She argued that, like all other students, ‘he has the capacity to learn’, stating: ‘...we have good expectations for him. He is never going to be a brain surgeon, but that is okay’.⁸⁰³

- 5.177** Other inquiry participants argued that SLSOs are indeed a valuable resource for teachers when used appropriately and have proven a positive impact on the delivery of quality education to students, particularly those with special needs.

- 5.178** For example, Ms Jan Pennisi, teacher, stated that in her experience, ‘it is very rare for a teacher’s aide in my setting to be used as a babysitting or a nanny-ing thing’.⁸⁰⁴ Instead, her SLSOs provide her with the much needed support and flexibility to manage a classroom of significant diversity. She explained:

One set of eyes in a classroom, with the diversity that we deal with in public education today, is not enough. If you take an average classroom that may have 30 students, three of which may have autism and another two that may have significant behavioural disability, there could be up to 10 students in that class who are not operating at the same intellectual level as their cohort, would challenge any teacher, myself included... There are such diverse needs in those classrooms that having that additional body gives you greater opportunity to create cooperative learning activities where you can meet the needs.

To have a person in the room that supports that child and is able to build rapport, apart from the classroom teacher, or to give a classroom teacher the flexibility to say,

⁷⁹⁸ Ms Barnes, 3 April 2017, p 30.

⁷⁹⁹ Evidence, Dr Heyworth, 27 March 2017, p 27.

⁸⁰⁰ Evidence, Dr Heyworth, 27 March 2017, p 27.

⁸⁰¹ Evidence, Dr Heyworth, 27 March 2017, p 27

⁸⁰² Evidence, Ms Caroline Thornton, Parent, 19 May 2017, p 11.

⁸⁰³ Evidence, Ms Thornton, 19 May 2017, p 11.

⁸⁰⁴ Evidence, Ms Jan Pennisi, Teacher, 8 May 2017, p 5.

‘Could you work with those three students’, or some of those things I said, ‘Could you help that student in the corner who has post-traumatic stress disorder because I am about to play a musical piece that is going to be far too loud.’ It is all those little things. We need the support of those people in the classroom.⁸⁰⁵

- 5.179** Moreover, Ms Pennisi informed the committee that her school utilises SLSOs ‘for a range of definitive learning outcomes’, providing a number of examples, including:

...we utilise our teacher’s aides to run actual reading and numeracy programs to build the capacity of those students. We would have a fast forward reading program. The teacher sets up the groups. The teacher's aide runs those groups. We have tracked student performance under the tuition of teacher's aides, and some of their reading ages in the last 12 months have improved up to three years.⁸⁰⁶

- 5.180** Some inquiry participants acknowledged the variability in knowledge, skill and experience amongst SLSOs. For example, Dr Laura Issa, parent, commented on her experience with SLSO who, while valuable, were ‘not always equipped to offer the best value for a child’.⁸⁰⁷ She observed that some SLSOs were highly skilled, while others were not, and argued that there was insufficient training for them⁸⁰⁸.
- 5.181** Others also discussed the training of SLSOs, giving mixed evidence to the committee. For example, Avalon Public School, on the one hand, argued that SLSOs require adequate training,⁸⁰⁹ while Homebush Public School insisted that training is not necessary. They explained: ‘Teachers are supposed to design programs for them to implement. No program designed for students with a specific disability should be beyond the SLSO’.⁸¹⁰

Committee comment

- 5.182** The committee acknowledges that different disabilities require different levels of support from SLSOs and we support the recommendation in the 2010 Upper House inquiry for a clear statement on the role and appropriate use of SLSOs.

⁸⁰⁵ Evidence, Ms Pennisi, 8 May 2017, pp 4-5.

⁸⁰⁶ Evidence, Ms Pennisi, 8 May 2017, p 6.

⁸⁰⁷ Evidence, Dr Issa, 27 March 2017, p 27.

⁸⁰⁸ Evidence, Dr Issa, 27 March 2017, p 27.

⁸⁰⁹ Submission 217, Avalon Public School, p 2.

⁸¹⁰ Submission 344, Homebush Public School, p 3.

Chapter 6 Complaints

Complaints about the provision of education to students with disabilities or special needs was a key feature of this inquiry.

This chapter considers complaint and review mechanisms in schools across New South Wales, with particular focus on complaints handling in government schools. In discussing the effectiveness of these processes, the chapter will also consider the concerns raised by parents and carers in their pursuit of educational access and support for their children.

Introduction

- 6.1** All schools in New South Wales, both government and non-government, are required to have and implement policies and procedures raising and responding to complaints or grievances identified by students and/or parents.⁸¹¹ These requirements are regulated by the NSW Education Standards Authority (NESAs) as part of their registration and accreditation process for government and non-government schools.⁸¹²
- 6.2** The following sections will consider complaint and review mechanisms in government and non-government schools respectively. It is noted that the bulk of evidence received during this inquiry was around the mechanisms in place for government schools and the experiences of inquiry participants within that sector.

Complaint and review mechanisms in government schools

- 6.3** In January 2017, the NSW Department of Education released a new complaints handling policy, *School Community and Consumer Complaint Procedure*, following a review under the whole-of-government Complaint Handling Improvement Program (CHIP).⁸¹³
- 6.4** Maintaining ‘a commitment to dealing with issues raised by complainants thoroughly and fairly’,⁸¹⁴ the revised policy is directed at external complainants, including parents and community members.⁸¹⁵ It outlines timeframes and processes for complaint handling as well as providing information about the thresholds and mechanisms for both internal and external review.⁸¹⁶

⁸¹¹ Submission 135, NSW Government, p 37.

⁸¹² Submission 135, NSW Government, p 37; Submission 133, Catholic Education Commission, p 21; Submission 23, Association of Independent Schools of New South Wales, p 16; NSW Education Standards Authority, *Registration Process for the NSW Government Schooling System Manual*, July 2017, p 11; NSW Education Standards Authority, *Registered and Accredited Individual Non-government Schools (NSW) Manual*, July 2017, p 37.

⁸¹³ Submission 135, NSW Government, p 39.

⁸¹⁴ Submission 135, NSW Government, p 37.

⁸¹⁵ Evidence, Ms Jane Thorpe, Executive Director, Employee Performance and Conduct Directorate, NSW Department of Education, 23 June 2017, p 66.

⁸¹⁶ Submission 135, NSW Government, p 37 and 39.

- 6.5** Ms Jane Thorpe, Executive Director, Employee Performance and Conduct Directorate, NSW Department of Education, advised that, previously, the Department had a single complaints policy for all complaints, both internal and external. It became apparent, however, that there was a need for separate and more simpler, clearer procedures for the wider school community.⁸¹⁷
- 6.6** Accordingly, the committee was informed that the Department is streamlining its complaints procedures to increase accessibility for external complainants, encourage and support issues being raised at the local level, and to focus on the role of complaints managers to respond promptly to complainants.⁸¹⁸

The complaints process

- 6.7** According to the Department's complaints policy, complaints can be made in many different ways, for example, in person, by telephone, in writing or online.⁸¹⁹
- 6.8** Inquiry participants clarified this point throughout the inquiry, when it was suggested that complaints were not being accepted because of the format in which it was received. Ms Thorpe confirmed that '[t]here is a complaint form but absolutely we accept complaints in a whole range of ways'.⁸²⁰ She elaborated:

Our complaints policy is very clear that informal complaints and direct complaints are encouraged. There is a mechanism for those people who want to fill in forms on our website to be able to do so. Generally my understanding would be that people tend to make complaints directly to their school. Certainly our policy is very clear that people should be able to make complaints verbally and any other way that they wish to do so. So anonymous complaints are accepted, verbal complaints are accepted. You are not required to fill in a form to make a complaint.⁸²¹

- 6.9** A number of principals gave the same evidence, with Ms Diane Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, stating that '[t]ypically, a principal would accept emails, phone calls, in-person complaints, hearsay or whatever is required. We would try to act on those'.⁸²²
- 6.10** In addition, Ms Thorpe, NSW Department of Education, advised that as part of moves towards a whole-of-government centralised complaints unit, a 'feedback assist widget' will provide an online function for complaints to be made about any government agency, including the Department. With the Department's participation in this move, she stated: 'We

⁸¹⁷ Evidence, Ms Thorpe, 23 June 2017, p 70.

⁸¹⁸ Submission 135, NSW Government, p 39; Evidence, Ms Thorpe, 23 June 2017, p 70.

⁸¹⁹ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 2.

⁸²⁰ Evidence, Ms Thorpe, 27 March 2017, p 6.

⁸²¹ Evidence, Ms Thorpe, 27 March 2017, p 6.

⁸²² Evidence, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, 27 March 2017, p 49.

are trying to establish a “no wrong door” policy where people can make complaints in a variety of ways’.⁸²³

- 6.11** During the inquiry, the Department maintained that all complaints are addressed, regardless of the substance of the complaint. As Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, stated: ‘All complaints are dealt with. There is no particular threshold about what can or cannot be complained about... The way that they are dealt with or who they might be allocated to be dealt with would depend on the specifics of the concerns being raised’.⁸²⁴
- 6.12** Indeed, the Department’s complaints policy stipulates that, depending on the type of complaint, different processes will apply, including referring the matter outside of the Department. For example, if there are allegations of criminal conduct, there must be a report to the Police.⁸²⁵
- 6.13** The complaints process was a key issue with stakeholders for this inquiry, primarily discussing complaints of two different natures – the first being complaints around the provision of educational access and support, and the second being around staff misconduct and allegations of ill-treatment. These complaints broadly reflect and draw on the two main pathways for complaints to be investigated by the Department, that is, either through local resolution with avenues for escalation within the Department, or through the Department’s Employee Performance and Conduct Directorate (EPAC).
- 6.14** These pathways will be considered within the context of the types of complaints that were raised during the inquiry in the coming sections.
- 6.15** Following the outcome of a complaint, the Department’s complaints policy provides for complainants to request a review if the complaint outcome was incorrect or the complaint handling process was unfair.⁸²⁶ An internal review may then be conducted by senior departmental officers, primarily by Directors Public Schools with the support of Executive Directors and local Education Services staff, in accordance with guidelines under the policy.⁸²⁷ An external review of the complaint may be conducted by organisations, such as the NSW Ombudsman,⁸²⁸ or the complaint may be taken to the Anti-Discrimination Board of NSW or the Australian Human Rights Commission as additional mechanisms for dealing with complaints concerning support for students with disabilities.⁸²⁹
- 6.16** The role of the NSW Ombudsman will be considered later in the chapter.

⁸²³ Evidence, Ms Thorpe, 23 June 2017, p 66.

⁸²⁴ Evidence, Ms Melissa Clements, Director, Disability, Learning and Support, NSW Department of Education, 27 March 2017, p 11.

⁸²⁵ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 2.

⁸²⁶ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 6.

⁸²⁷ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 6; Submission 135, NSW Government, p 37.

⁸²⁸ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 6.

⁸²⁹ Submission 135, NSW Government, p 40.

Committee comment

- 6.17** The committee acknowledges the new complaints policy, *School Community and Consumer Complaint Procedure*, released by the Department during the course of the inquiry. In particular, the committee notes and is encouraged by the fact that the policy was developed in direct response to the need for simpler, more clearer targeted procedures for external complainants, such as parents and community members.
- 6.18** We also recognise moves within the Department, in line with broader cross agency reform in complaints handling, to make the complaints process more accessible by facilitating the lodgement of complaints in many forms.
- 6.19** Furthermore, the committee recognises the different pathways for complaints resolution, including mechanisms for both internal and external review.

Complaints about the provision of access and support

- 6.20** During the inquiry, a significant area of concern and complaint was the failure of schools to provide educational access and support to students with disabilities and special needs. Parents shared their experiences of seeking adjustments for their children and then having to raise complaints when those adjustments were not adequately provided, if at all.
- 6.21** For example, Ms Suzanne Robertson, parent, advised that she had sought basic acoustic adjustments, such as soundproofing panelling, for her son who is deaf and has ‘tremendous difficulty in background noise’.⁸³⁰ She explained that her requests were met with much resistance, resulting in her raising a complaint that was considered at ‘a school level, at a departmental level, at any level that we could come across’, before it became a ministerial complaint.⁸³¹ Ms Robertson stated: ‘That was the process we had to get to before those adjustments were made at a classroom level, which took a very long time’.⁸³²
- 6.22** For such complaints, the expectation and intention is that these are resolved at the local level, in accordance with the Department’s complaints policy. For the Department, local resolution means that complaints are dealt with ‘as informally and as promptly as possible’ by the school, in the first instance by the relevant teacher or staff member, and then, if unresolved, by the principal or a complaint manager (for example, another teacher).⁸³³
- 6.23** Even prior to the release of the recently revised complaints policy, Ms Thorpe, NSW Department of Education, advised that the emphasis on complaint resolution at the local level has been an ongoing focus for the Department, explaining:

The issue that has been an ongoing matter and that our focus in past years has been trying to improve is complaints management at the local level. It is a very relational

⁸³⁰ Evidence, Ms Suzanne Robertson, Parent, 8 May 2017, p 17.

⁸³¹ Evidence, Ms Robertson, 8 May 2017, p 17.

⁸³² Evidence, Ms Robertson, 8 May 2017, p 17.

⁸³³ Submission 135, NSW Government, p 39; NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 3.

organisation, so we want people to be able to go into schools to talk to principals and teachers about particular concerns that can be resolved on a day-to-day basis.⁸³⁴

- 6.24** As such, the Department's complaints policy currently sets the expectation that '**most** complaints are best resolved promptly at the local level', '**some** complaints will need the involvement of the principal, workplace manager or another executive staff member', and '**few** complaints should require management at the director level'.⁸³⁵
- 6.25** During the inquiry, the committee received evidence from a number of principals who reflected on the process, with some sharing their concerns about complainants seeking resolution above the local level in the first instance and taking their complaints directly to the Department.
- 6.26** For example, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association, stated that many principals proactively seek to address concerns 'at the earliest possible stage because that is when we know we can support families, support kids and get it right for teachers, and then hopefully have success with engagement with education'.⁸³⁶ She explained that to be 'taken out of the loop' means they are not able to provide families with support:
- I think all principals and schools are erring on the side of proactive intervention to prevent issues from coming about. We work closely through many mechanisms and system within schools to make sure our kids are successful, that we are dealing with issues quickly and that complaints that are coming to us are dealt with at the coalface before it goes any further. To think that issues go directly higher above us is a concern because quite often we are the supportive mechanism for a lot of our families... [I]f a parent chooses to go past the principal's door and goes straight to the network to put a complaint forward, we are taken out of the loop to a large extent there.⁸³⁷
- 6.27** However, a number of parents expressed a deep reluctance in pursuing local resolution and having their complaints considered by the principal for various reasons.⁸³⁸ For example, some parents advised that the principals they encountered were dismissive, defensive or not open to considering or accommodating requests.⁸³⁹
- 6.28** Dr Laura Issa, a parent who had sought enrolment at eight different schools for her son who has cerebral palsy, said she wanted her son to be included in a regular class at a mainstream school. Dr Issa's son was initially refused at one school and then later accommodated after Dr Issa went above the principal with her complaint. Even then, her son was able to attend the school but only on the condition that he enters a support class. Dr Issa told the committee:

⁸³⁴ Evidence, Ms Thorpe, 23 June 2017, p 66.

⁸³⁵ NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 3.

⁸³⁶ Evidence, Ms Robertson, 27 March 2017, p 46.

⁸³⁷ Evidence, Ms Robertson, 27 March 2017, p 46.

⁸³⁸ For example, Submission 147, Mrs Meaghan Sweeney, p 2; Submission 207, Name suppressed, p 7; Submission 196, Name suppressed, p 5.

⁸³⁹ For example, *In camera* evidence, Witness A, 8 May 2017, p 3, published by resolution of the committee; Submission 159, Children and Young People with Disability Australia, p 28; Submission 196, Name suppressed, p 5.

...I had difficulties with the school my son was at and I confronted the principal. Originally she said, 'No, we can't take [your son]', and then I got anxious and I went above her and made a complaint... The principal got quite defensive and I found the situation very difficult to manage because she sort of... dug her heels in and wanted to defend her position and her approach, and yet what she was being told was, 'You need to accommodate this child', and her solution was I had to make a concession and the condition of entry was 'must go into the IM [Mild Intellectual Disability] class'. I found that entrenched in that it was on her terms and I had to make concessions to get entry, which at the time I was at my wit's end because I could not find a school and there was no-one else on my side...⁸⁴⁰

- 6.29** Of her situation, Dr Issa stated: '...you do the best you can and you do not want to cause trouble'.⁸⁴¹ Indeed, for many parents who participated in the inquiry, ultimately, it was this sense of fear in raising their concerns that troubled them most about this particular pathway for resolving their issues.

The fear of victimisation

- 6.30** The most significant concern raised by inquiry participants about complaints handled at the local level, and then beyond if escalated within the Department, is that it is an inherently biased process that carries a risk of victimisation for complainants and the children they are seeking support for.
- 6.31** The committee received evidence questioning the efficacy of a process wherein the principal, who represents the first port of call for complaints at the school level, is the same person who determines access and support for the students at their school and may often be the subject of the complaint. For many parents, it is an untenable situation because of the fear that a complaint may result in negative repercussions for their child and family.⁸⁴²
- 6.32** For example, Witness A advised that, while they had raised concerns with the school about the assistance being provided to their son with multiple disabilities, they were 'constantly met with the attitude that "Well, you are not going to get any assistance. We will not get funding. This is your problem. You need to fix him up so that he can meet expectations at school"'.⁸⁴³ Witness A stated they did not make a formal complaint because they were afraid that it would threaten their son's enrolment at the school. The inquiry participant explained:

I did not put in a formal complaint, largely because at that stage my son had actually made friendships within the school and we were very keen to maintain his enrolment in school. I was quite frightened that if we put in formal complaint procedures, the vibes created by that would make it impossible to keep him enrolled at the school.⁸⁴⁴

⁸⁴⁰ Evidence, Dr Laura Issa, Parent, 27 March 2017, p 24.

⁸⁴¹ Evidence, Dr Issa, 27 March 2017, p 24.

⁸⁴² For example, Evidence, Dr Rachel Sowden, Parent and New England Delegate of the Federation of Parents and Citizens Associations of NSW, 3 April 2017, p 33-34; Evidence, Ms Aby Hutchinson-West, Manager, Multidisciplinary Services, Northcott, 3 April 2017, p 49; Submission 196, Name suppressed, p 5.

⁸⁴³ *In camera* evidence, Witness A, 8 May 2017, p 3, published by resolution of the committee.

⁸⁴⁴ *In camera* evidence, Witness A, 8 May 2017, p 3, published by resolution of the committee.

- 6.33** According to Ms Robertson, who sought adjustments for her deaf son, her relationship with the school actually started to change once she spoke up. Her role became that of advocating and ‘people started to put up barriers to that advocating’.⁸⁴⁵ She stated that the school was ‘not as receptive to what needed to happen’, and claimed she had reason to fear there would be retaliation if she persisted.⁸⁴⁶
- 6.34** For Mr David Roy, parent and academic, he argued that the fear was in fact justified because he was told his actions would have a direct bearing on the outcome of his son’s placement at a school. He stated: ‘I am not alone; people get intimidated. They get informed, “Drop your complaint, we will give you a better placement.” I have at least seven instances that I can state, including ourselves’.⁸⁴⁷
- 6.35** Indeed, a number of parents shared about being confronted with a difficult choice to make if they wanted their child’s needs met. For example, Ms Robertson told the committee she was caught between wanting to maintain a workable relationship with the school and pursuing her child’s needs – a feeling she argued is common amongst families of children with disabilities or special needs:
- Most of the families I know are kind of the same. They feel, ‘I do not want to speak out; I really want to have a relationship with my school.’ That is what I wanted also, and the most devastating thing about the complaints process is that I feel like I was put in a position where I had to advocate for my son. I had to make a choice whether or not I was going to have a relationship with my school or have my child’s needs met.⁸⁴⁸
- 6.36** This view was also expressed by Mrs Meaghan Sweeney, parent of a child with Down Syndrome, who stated that many families are reluctant to engage in the complaints process because they wanted a good relationship with the school and did not want their child to suffer the consequence of vocalising their concerns. She asserted:
- Although there is a complaints process within the education system many families are reluctant to use it. Most families would like a good working relationship with their child’s school and fear that making a formal complaint will add heat to an already volatile situation. Their greatest fear is that the school will take out any vengeance on their vulnerable child or any brothers and sisters that attend the school.⁸⁴⁹
- 6.37** A number of advocacy organisations confirmed that these concerns are widespread among vulnerable parents who fear that their child’s enrolment would be at risk or their child would become subject to bullying, public shaming or retribution if they lodged a complaint about their child’s experiences at school, including their access and support.⁸⁵⁰

⁸⁴⁵ Evidence, Ms Robertson, 8 May 2017, p 18.

⁸⁴⁶ Evidence, Ms Robertson, 8 May 2017, p 18.

⁸⁴⁷ Evidence, Mr David Roy, parent and academic, 27 March 2017, p 31.

⁸⁴⁸ Evidence, Ms Robertson, 8 May 2017, p 17.

⁸⁴⁹ Submission 147, Mrs Meaghan Sweeney, p 2.

⁸⁵⁰ For example, see Submission 151, Family Advocacy, p 20; Submission 164, Lifestart, p 22; Evidence, Ms Suzanne Becker, Chief Executive Officer, Lifestart, 3 April 2017, p 64.

6.38 For the principals that participated in the inquiry, the notion that families would be victimised by having resources or support limited or cut for raising complaints is ‘highly inappropriate’, ‘appalling’ and ‘abhorrent’.⁸⁵¹ As Mr Chris Presland, President, NSW Secondary Principals’ Council, stated:

...I would be horrified to think that there would be principals who would say what you have just said, that for whatever reason almost as a disciplinary or punitive measure, ‘We’re going to pull your funding’. That is appalling... The scenario that you are describing goes beyond students with disability. That is cutting to the core of one’s value as a leader and as an educator.⁸⁵²

6.39 Ms Anne Flint, Executive Member, Special Education Principals’ and Leaders’ Association, added that their members are seeking to supplement resources rather than deny students. She stated:

Our members are telling us that they are adding resources above the provision in order to try to sustain some of the most complex kids in our special schools. They are going out and rattling the tin for people in the community to top up educational provisions. They are not denying students.⁸⁵³

6.40 Mr Peter Skinner, President, Special Education Principals’ and Leaders’ Association, was also horrified, advising that he is not aware of such action being taken against parents and their children: ‘Apart from the fact that it is highly inappropriate, I do not know. We have many colleagues who are principals and I do not think any of us have heard anything similar to that. It is pretty abhorrent’.⁸⁵⁴ Mr Presland agreed, stating: ‘I have never heard of that, I have never seen that and I would be appalled by that’.⁸⁵⁵

6.41 Moreover, these principals advised that they in fact have limited power in this regard. Using the example of guaranteeing a placement for a student in a support class, Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals’ Association, advised: ‘We have not got that power to put kids in classes’.⁸⁵⁶

6.42 Others argued that decisions about support and resource allocation are made in conjunction with the school’s Learning and Support Team and not solely by the principal, as Mr Presland asserted: ‘The principal would usually do that with the learning support team. They would not necessarily make it by themselves’.⁸⁵⁷ Moreover, Mr Matthew Johnson, Vice President, Special Education Principals’ and Leaders’ Association, commented that decisions such as these require consultation and cannot be made alone by any principal wanting transparency:

⁸⁵¹ For example, Evidence, Mr Chris Presland, President, NSW Secondary Principals’ Council, 27 March 2017, p 48; Evidence, Mr Peter Skinner, President, Special Education Principals’ and Leaders’ Association, 27 March 2017, p 49.

⁸⁵² Evidence, Mr Chris Presland, President, NSW Secondary Principals’ Council, 27 March 2017, p 48.

⁸⁵³ Evidence, Ms Anne Flint, Executive Member, Special Education Principals’ and Leaders’ Association, 27 March 2017, p 49.

⁸⁵⁴ Evidence, Mr Skinner, 27 March 2017, p 49.

⁸⁵⁵ Evidence, Mr Presland, 27 March 2017, p 49.

⁸⁵⁶ Evidence, Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals’ Association, 27 March 2017, p 48.

⁸⁵⁷ Evidence, Mr Presland, 27 March 2017, p 47.

I think it comes down to the level of trust that is implied on the principal's role and our code of conduct and our ethical standards on how we comply. I have not seen any of my colleagues that have not acted very openly across their school... You need to consult; you cannot do this alone any more.⁸⁵⁸

6.43 Ms Clements, NSW Department of Education, confirmed this point, commenting: '...each school has a Learning and Support Team that would be fundamentally part of making the day to day decisions about support for students'.⁸⁵⁹

6.44 Ms Clements did acknowledge, however, that responsibility for the Learning and Support Team ultimately rests with the principal, who in turn is the first point of reference for any complaints about access and support:

Yes, the school principal is responsible for the learning and support team. If a parent is raising a concern about how the resources or support has been arranged for their child the principal would be the first appropriate point of reference to resolve that.⁸⁶⁰

6.45 But the Department insisted that a principal could not investigate themselves, with Ms Thorpe maintaining that 'it is very clear a staff member cannot investigate themselves'.⁸⁶¹ She explained that complaints about a principal would be considered by the Director, Public Schools.⁸⁶² Likewise, Ms Clements advised that if parents did not wish to complain to a principal or wanted to go beyond the principal, 'there are mechanisms for them to be able to do that'.⁸⁶³

6.46 Nevertheless, Ms Thorpe, acknowledged the concerns around the way complaints are handled at the school level and advised that the Department is seeking to improve this. She explained:

We have tried to focus our efforts on improving people's skills in handling complaints because that was where we had the greatest concern in the organisation; about people's competence and skills at the school level to handle complaints from members of the community and parents. We have focused our attention on policies and procedures and improving people's skills in managing those complaints.⁸⁶⁴

6.47 Furthermore, the Department informed that it 'has committed resources to building the capacity of complaint managers to increase responsiveness and flexibility in working with complainants productively and to achieve mutually satisfactory outcomes'.⁸⁶⁵

⁸⁵⁸ Evidence, Mr Matthew Johnson, Vice President, Special Education Principals' and Leaders' Association, 27 March 2017, p 47.

⁸⁵⁹ Evidence, Ms Clements, 27 March 2017, p 16.

⁸⁶⁰ Evidence, Ms Clements, 27 March 2017, p 16.

⁸⁶¹ Evidence, Ms Thorpe, 27 March 2017, p 15.

⁸⁶² Evidence, Ms Thorpe, 27 March 2017, p 15.

⁸⁶³ Evidence, Ms Clements, 27 March 2017, p 10.

⁸⁶⁴ Evidence, Ms Thorpe, 27 March 2017, p 15.

⁸⁶⁵ Submission 135, NSW Government, p 39.

Committee comment

- 6.48** The committee notes with concern that a significant basis for complaints in this inquiry was the inadequate provision of access and support to students with disabilities and special needs. The committee acknowledges that for such complaints, local resolution at the school level is emphasised, and that guidelines exist for how such complaints are to be responded to.
- 6.49** The committee is troubled, however, by the fact that many parents are reluctant to engage in this process, particularly with taking complaints to the school principal, for fear of ‘causing trouble’ such that there would be negative consequences for their child or their family.
- 6.50** While the committee notes the strong reaction of school executives involved in this inquiry against the suggestion that principals would exercise their authority in a punitive way, the committee is mindful that not all consequences are blatant and that often there is subtle, negative messaging in response to a concern that is raised. For many parents it is this messaging that gives weight to the perception that they will be victimised if they lodge a complaint.
- 6.51** Parents should not have to choose between maintaining a working relationship with the school and ensuring that their child’s needs are met. The committee recognises there is improvement to be made in this area. In this regard, the committee welcomes all efforts by the Department to improve people’s skills in complaints handling.

Complaints about staff misconduct and allegations of ill-treatment

- 6.52** The other key area of concern and complaint raised during the inquiry was around staff misconduct and allegations of ill-treatment against students with disabilities and special needs. A number of inquiry participants shared personal stories of their children suffering varying degrees of harm, allegedly at the hands of teachers and principals.⁸⁶⁶
- 6.53** For example, one parent advised that they had witnessed their son being physically removed from the school playground and taken to a ‘lockable structure’ by a school executive and teacher’s aide. The parent stated that their son was ‘restrained and then detained in this lockable structure and left there unsupervised...’. The parent explained:

...[staff] both returned to the main school playground area. [Son] could not be seen or supervised from the school office or any classrooms whilst he was being detained in this Lockable Structure.

[Staff] could not see the parent. [Staff] did not engage in conversation with [son] & each had hold of one of [son’s] hands/arms. [Staff] had [son’s] feet dragging during this incident and also elevated from the ground at one point. [Son] was squirming, kicking out and fighting to break their hold and escape his fate. [Son] was hysterical, screaming, swearing, crying, telling staff he hated them and asking them to let him out at the same time. It was sunny, hot and the Lockable Structure area provides no shade. [Son] had no hat and no water...

⁸⁶⁶ For example, Submission 146, Name suppressed, pp 1-2, Submission 201, Name suppressed, p 1; Submission 411, Ms Georgina Maker, p 1; Submission 19, Name suppressed, p 2.

[Son] does not think of this Lockable Structure as a safe and fun place to play. He thinks it is were bad kids go when they are naughty. [Son] remains traumatised by the memories of being taken to this area. Witnessing this incident was horrendous for the parent and still causes trauma when revisited.⁸⁶⁷

- 6.54** For these matters, where an allegation or complaint of a child protection nature is made against an employee of the Department, under the Department's complaints policy, it must be referred to the Department's Employee Performance and Conduct Directorate (EPAC).⁸⁶⁸
- 6.55** According to the NSW Government, EPAC 'develops and implements systems to ensure the welfare of all students by investigating and managing employee conduct and performance issues'.⁸⁶⁹ Essentially, advised Ms Thorpe EPAC 'deals with reportable conduct and misconduct allegations'.⁸⁷⁰
- 6.56** For complaints of this nature, matters are assessed as part of a process to identify the most appropriate course of action for an allegation, including whether the allegation: should be referred back to the school for action, with no further EPAC involvement because the matter is not reportable; is suitable for handling at the local level under EPAC oversight, with the aim to facilitate the timely resolution of less serious allegations; or requires a full investigation by EPAC.⁸⁷¹ EPAC must also ensure relevant allegations are referred to an appropriate agency, including the NSW Ombudsman, the NSW Department of Family and Community Services, and the NSW Police.⁸⁷²
- 6.57** Ms Thorpe explained this process in practice:
- We have an assessment team that sits every morning within the directorate. We also have officers on duty every day who take direct calls from anybody who raises a concern of that nature. Those matters are assessed and they are triaged. There are serious matters of reportable conduct that will be investigated by the directorate as a forensic investigation. In some circumstances they will be referred to the police or to the appropriate agencies if that has not already been done by the school.⁸⁷³
- 6.58** EPAC's jurisdiction for investigating reportable conduct and misconduct allegations is largely determined by provisions within the *Ombudsman Act 1974* and agreements between the Department and the NSW Ombudsman.
- 6.59** As outlined in the NSW Ombudsman's recent report from its inquiry into behaviour management in schools, when an allegation of 'reportable conduct' is made against an

⁸⁶⁷ Submission 197, Name suppressed, p 4.

⁸⁶⁸ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 69; NSW Department of Education, *School Community and Consumer Complaint Procedure*, January 2017, p 2.

⁸⁶⁹ Submission 135, NSW Government, p 37.

⁸⁷⁰ Evidence, Ms Thorpe, 27 March 2017, p 9.

⁸⁷¹ NSW Department of Education, *Draft guidelines – Responding to Allegations Against Employees in the Area of Child Protection*, 2017, as cited in NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 69.

⁸⁷² NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 69.

⁸⁷³ Evidence, Ms Thorpe, 23 June 2017, p 67.

employee of a relevant government or non-government agency, the head of agency is required to notify the NSW Ombudsman.⁸⁷⁴

- 6.60** While the Act defines what ‘reportable conduct’ is, it also specifies what ‘reportable conduct’ does not extend to, including ‘conduct of a class or kind exempted from being reportable conduct by the Ombudsman...’.⁸⁷⁵ Effectively, the Act permits the NSW Ombudsman to determine certain kinds of allegations as being exempt from reporting requirements.
- 6.61** In 2010, the NSW Ombudsman executed a ‘class or kind determination’ with the Department, defining these types of allegations that are not subject to oversight by the NSW Ombudsman. Under the determination, ‘no allegation of ill-treatment needs to be reported to the Ombudsman as a reportable allegation, unless it is alleged that the ill-treatment resulted in significant physical harm... or a child suffered psychological harm as a result of the ill-treatment’.⁸⁷⁶ The determination also excludes certain allegations of neglect and physical assault from being reported to the NSW Ombudsman.⁸⁷⁷
- 6.62** While these exemptions apply, the NSW Ombudsman stated that the Department is ‘nevertheless required to investigate the allegation... and take appropriate action resulting from the investigation’.⁸⁷⁸
- 6.63** The determination was executed on the basis that the Department has ‘a centralised unit of specialist staff to drive a consistent response to reportable conduct allegations’ in EPAC,⁸⁷⁹ and, according to the NSW Government ‘has achieved a sound standard of investigative practice’.⁸⁸⁰
- 6.64** Indeed, Ms Thorpe asserted that EPAC exercises its role and authority seriously, stating: ‘We often go to extreme lengths to be able to clarify the facts and to make sure that there is a fair outcome for all’.⁸⁸¹ She maintained that ‘[t]he most significant issue at the end of the day is the safety of children at schools... My role is to make sure that, to the best of my ability, students are protected at school...’.⁸⁸²
- 6.65** In particular, Ms Thorpe acknowledged that students with disabilities are especially vulnerable when an EPAC process is engaged, and advised that ‘it is certainly one of the key risk factors in making a decision about whether or not to investigate a matter’.⁸⁸³

⁸⁷⁴ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 65.

⁸⁷⁵ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 65.

⁸⁷⁶ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 67.

⁸⁷⁷ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 67.

⁸⁷⁸ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 67.

⁸⁷⁹ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 67.

⁸⁸⁰ Submission 135, NSW Government, p 38.

⁸⁸¹ Evidence, Ms Thorpe, 23 June 2017, p 69.

⁸⁸² Evidence, Ms Thorpe, 23 June 2017, p 69.

⁸⁸³ Evidence, Ms Thorpe, 27 March 2017, p 9.

Concerns about ‘reportable conduct’

6.66 EPAC’s authority to investigate certain allegations of misconduct and the implications for what is then visible to the NSW Ombudsman was a key concern among inquiry participants discussing the EPAC complaints process.

6.67 For example, Mr David Roy, parent, questioned how a range of serious harms inflicted on students are not deemed as conduct reportable to the NSW Ombudsman, and are instead within the remits of the Department for investigation:

The issue comes with what is reportable conduct... it has been passed over to schools—and particularly for the Department of Education—to decide if a matter is reportable conduct or not. From my experience, the department decides that such matters as forcing a child to the ground, dragging them across a playground, sitting on them, twisting their arm, slamming their head against a wall, dragging them across a carpet so that their face bleeds, locking them up in cupboards, force-feeding them, hitting them—none of these are reportable conduct but are just to be dealt with internally.⁸⁸⁴

6.68 Mr Roy could not reconcile the Department’s commitment to protecting the safety and wellbeing of students with his personal experience as a parent of a child with disabilities and advocate for others:

I have to be careful how I phrase this so I do not become emotive or passionate. The department’s evidence does not seem to match with both my own personal experience as a parent or the multiple experiences of the hundreds of families that my wife and I have been advocating and supporting on behalf of.⁸⁸⁵

6.69 Dr Jessica Cadwallader, Project Manager, Violence Protection, People with Disability Australia, shared these concerns, arguing that there are ‘particular forms of behaviour that are routinely excluded from consideration by the Ombudsman...’ which is ‘problematic in and of itself’.⁸⁸⁶

6.70 Dr Cadwallader drew particular attention to the use of ‘reasonable action’ and ‘substantial’ violence as a means to manage behaviour and how, without oversight or notification to the NSW Ombudsman, it cannot be determined whether such behaviour is indeed appropriate, if at all:

...the Ombudsman may never even receive any notification about what may be quite substantial violence and the questions about the use of reasonable action and disarming a child, separating a child, restraining a child or moving a child away from a place where the person may be harmed. The problem is that when we take all of those kinds of behaviours out of oversight we never actually work out whether or not these are problems. Effectively, there is all this behaviour occurring towards children that is excluded from the Ombudsman's oversight. I am not saying that every single instance is going to be understood as violence and that it is conduct that needs to be

⁸⁸⁴ Evidence, Mr Roy, 27 March 2017, p 19.

⁸⁸⁵ Evidence, Mr Roy, 27 March 2017, p 19.

⁸⁸⁶ Evidence, Dr Jessica Cadwallader, Project Manager, Violence Protection, People with Disability Australia, 3 April 2017, p 43.

responded to, but it does need to be examined to see whether or not it is appropriate in the circumstances.⁸⁸⁷

6.71 As a specific focus of its inquiry into behaviour management in schools, the NSW Ombudsman investigated reportable conduct allegations involving students with disability as well as complaints handling systems and practices across both government and non-government sectors, and tabled its report to Parliament in August 2017.

6.72 The inquiry presented a number of significant and relevant findings. Key amongst these is that ‘significant concerns exist around actual or potential ill-treatment of student with disability in schools’, particularly without requirements for such conduct to be reported. As a result, the NSW Ombudsman advised that it would be amending its class or kind determination with the Department to bring *all* ill-treatment allegations under its direct oversight. The report stated:

The number of ill-treatment allegations contained in our audit sample, together with our broader consultations and reviews, have shown that significant concerns exist in relation to the actual and/or potential ill-treatment of students with disability in schools, particularly in the absence of external oversight. ...[I]n light of the concerns which have been expressed about the need for all allegations of ill-treatment to be externally reviewed, we will be amending our class or kind determination with the department to bring all ill-treatment allegations under our direct oversight.⁸⁸⁸

6.73 The NSW Ombudsman asserted that the amendment ‘will provide an important safeguard for students with disability, as well as students more generally’.⁸⁸⁹

6.74 The NSW Ombudsman also observed some inconsistent practice with how allegations involving the use of physical force were assessed by EPAC, thereby resulting in a number of matters that it believed should have been classed as ‘reportable conduct falling within the class or kind determination’. The NSW Ombudsman explained the practical implications of this, including the potential for such allegations to indeed warrant investigation:

The practical impact of the assessment outcome is that if an allegation does not meet the threshold of ‘reportable conduct’, it is not reportable to the Ombudsman, and while it should still be appropriately responded to by the department, there is not requirement that it be ‘investigated’ (unlike allegations of ill-treatment that are assessed as falling within the class or kind determination).⁸⁹⁰

6.75 The NSW Ombudsman found that there is a need for enhanced guidance for EPAC staff on the interpretation of ‘the use of force, that in all of the circumstances, is trivial or negligible...’, and proposed that the Department consider this in its current review of the EPAC guidelines for responding to child-protection allegations.⁸⁹¹

⁸⁸⁷ Evidence, Dr Cadwallader, 3 April 2017, p 44.

⁸⁸⁸ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 73.

⁸⁸⁹ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 73.

⁸⁹⁰ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 73.

⁸⁹¹ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 73.

Committee comment

- 6.76** The committee is deeply concerned by reports of the ill-treatment and abuse of students with disability and special needs that have been shared in this inquiry. The committee notes that mechanisms are in place to address these kinds of complaints through EPAC.
- 6.77** The committee acknowledges that much of the concern raised in this inquiry around the handling of complaints of this nature was in regards to EPAC's authority to investigate certain allegations of misconduct. The committee notes that inquiry participants were particularly concerned about the implications of this authority on what is then visible to the NSW Ombudsman for investigation.
- 6.78** The committee welcomes advice by the NSW Ombudsman that it will be amending its class or kind determination with the Department to bring *all* ill-treatment allegations under its direct oversight. The committee believes this will go some way in addressing the concerns about 'reportable conduct' raised in this inquiry.

Finding 4

That the level of allegations of ill-treatment of disabled children in New South Wales Schools, including those under the Department's supervision, and the number of reportable incidents, are unacceptable.

Is there a conflict of interest?

- 6.79** With these complaint mechanisms in place within the government sector, an overarching question raised by inquiry participants was whether there is in fact a fundamental conflict of interest with the Department, at all levels, having responsibility and authority to effectively investigate itself.
- 6.80** The committee received evidence demonstrating the circular nature of complaints handling by the Department, and the concerns of inquiry participants who have found themselves in the middle.
- 6.81** For example, a parent of a child with autism and attachment disorder informed the committee that they had raised a complaint about physical force being used on their child, which resulted in bruising and injury, by a teacher and the principal, who in turn ended up receiving the report. The inquiry participant raised concerns about the principal being both the subject and investigator of the complaint but was told that it was part of the complaints handling process:

I had reported both of these incidents as they happened roughly within a week of each other and had made a phone call to the Department of Education... I was told that the Principal would become aware of this report within two days. I voiced my concern

that one of the reports was involving the principal and asked the DOE if there was another avenue to report. Their answer was ‘No, that this is the policy we follow’.⁸⁹²

6.82 This experience was validated by Dr Rachel Sowden, parent and New England Delegate of the Federation of Parents and Citizens Associations of NSW, who stated: ‘Usually the person who you complain about is the person who reviews what you have complained about, so there is a little bit of a conflict of interest there’.⁸⁹³

6.83 One witness argued that there are ‘huge problems’ with this self-examination, even with directors investigating their principals:

...there are huge problems with the department scrutinising itself with directors scrutinising their principals who are often seen as change agents, so when they are unpopular with the community, in a way, they are given a gold star by the director because that is why the director chose that person, if you like.⁸⁹⁴

6.84 Dr Sowden and her colleague, Mr Joel Matthews, Vice President, Federation of Parents and Citizens Association of New South Wales, thus expressed little confidence in the ability of the Department to investigate itself.⁸⁹⁵

6.85 Ms Robertson, a parent, shared an experience that gives credence to this view, advising that she was told not to bother putting in a complaint because the school would be commended regardless:

We were told by the principal that there is no point making a complaint about the school to the Department of Education, because they are just going to turn around and tell us that they are doing a wonderful job and they have done it before and they would do it again. We were told we were wasting everybody’s time, but we did anyway and that is exactly what happened.⁸⁹⁶

6.86 Another witness expressed the frustration of pursuing a complaint with the Department, conceding that it can come at the cost of time and health:

When it said the best place to resolve your issue is, say if it starts within the classroom, the teacher, and then up and up. But, to be honest, sometimes you could waste too much of your time and it could have too much of an impact on your health, because sometimes it just feels like you are beating your head against a brick wall. ...⁸⁹⁷

6.87 In response to such concerns, Ms Clements, NSW Department of Education, acknowledged that the perception of a conflict of interest is ‘a problem broadly in a range of complaints handling processes’.⁸⁹⁸ However, she argued that for complaints about access and support there are mechanisms for parents if they are concerned about who would be handling the complaint. She explained:

⁸⁹² Submission 201, Name suppressed, p 1.

⁸⁹³ Evidence, Dr Sowden, 3 April 2017, p 33.

⁸⁹⁴ *In camera* evidence, Witness D, 19 May 2017, p 6, published by resolution of the committee.

⁸⁹⁵ Evidence, Dr Sowden, 3 April 2017, p 33.

⁸⁹⁶ Evidence, Ms Robertson, 8 May 2017, p 17.

⁸⁹⁷ *In camera* evidence, Witness B, 19 May 2017, p 11, published by resolution of the committee.

⁸⁹⁸ Evidence, Ms Clements, 27 March 2017, p 10.

If they are lodging a formal complaint to the department and it comes into the department in writing... a decision will be made on the receipt of that complaint as to where that is best placed to manage that complaint. In some cases it could be a director in a different area who might be an appropriate person to manage a complaint if there are concerns about a particular area, or, in fact, another director who may have been previously involved.⁸⁹⁹

... there are a couple of different ways that that could travel. The parents raise the concern, in the first instance, with the principal who is making that decision, but alternatively it could be raised with the Director, Public Schools, who supervises that school. Some parents will make contact with local educational services offices. My experience is that when parents contact my part of the department we generally work with them and connect them with the local staff directly, and provide assistance to the local staff in relation to those matters. Sometimes it is about the choice. Some parents would prefer to be seeking other advice and help around their concerns, and some would prefer to pursue that as a complaint about the decision for the principal. Both of those can be accommodated.⁹⁰⁰

- 6.88** For complaints made about staff misconduct or allegations of ill-treatment, Mr Scott, Secretary, NSW Department of Education, maintained that EPAC is a distinct area within the Department that operates with expertise independently of the rest of the Department. He stated:

[EPAC] operate separately from our schools division. They operate in a separate part of the department, they operate independently, and they have clear rules and guidelines, which they are following. They bring considerable expertise in working with children, which I think police and Family and Community Services and others would testify can be a very difficult area when you are dealing with young people to get a fact base of significance. So they bring real expertise to play on this.⁹⁰¹

- 6.89** When asked if there should be an independent authority to oversight complaints and remove the conflict of interest, Ms Thorpe unequivocally asserted there should not, and argued that EPAC is 'very much oversighted' by the NSW Ombudsman.⁹⁰²

- 6.90** Moreover, Mr Scott argued that there is merit in having capacity for internal review, as other agencies do, to assess and evaluate matters, and provide opportunity for the Department to identify areas for improvement. He did acknowledge, however, that the complaints system may not be 'flawlessly executed' and recognised that there are problems with the system if the intended practice does not match the reality:

As a department, we have this internal mechanism and this internal capability, as any organisation of scale does. Police have their own internal affairs review units. There are audit teams in any organisation of scale. We need to ensure that we have the mechanisms in place to review these matters and also to provide a channel of insight back into other parts of the organisation.

⁸⁹⁹ Evidence, Ms Clements, 27 March 2017, p 10.

⁹⁰⁰ Evidence, Ms Clements, 27 March 2017, p 9.

⁹⁰¹ Evidence, Mr Mark Scott, Secretary, NSW Department of Education, 23 June 2017, p 69.

⁹⁰² Evidence, Ms Thorpe, 27 March 2017, p 8.

...it is not to say it will be flawlessly executed. It strikes me that in some of the evidence that you are bringing to light that does not seem to quite coalesce how we want the practice to be. So if people do not know the name of the investigator—and our practice is that they should know the name of the investigator—we have a problem.⁹⁰³

- 6.91** As such, the Department maintained its commitment to protecting the welfare of students, particularly those with disabilities and special needs, with Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, stating:

We also acknowledge that some submissions to this inquiry raise serious concerns. The department takes its obligations for the safety and wellbeing of students and staff seriously and is acutely aware of the increased vulnerability of students with disability, particularly in the area of child protection.⁹⁰⁴

- 6.92** The need for an independent authority as part of the complaint and review mechanisms available across schools is discussed at the end of the chapter.

Committee comment

- 6.93** The committee acknowledges the concerns raised by inquiry participants about a potential conflict of interest with the Department, at all levels, having responsibility and authority to investigate itself. Moreover, the committee notes how complaints handling, particularly from the school level to the Director level and back, is circular in nature.
- 6.94** The committee acknowledges the assurances of the Department that no staff member can investigate themselves, but is concerned about how this plays out in practice given the evidence that principals can be both the subject of the complaint and the investigator.
- 6.95** The committee understands that EPAC is an internal unit of the Department and notes the assurances given by the Secretary that it is a distinct area that operates independently and is oversighted by the NSW Ombudsman.

Complaint and review mechanisms in non-government schools

- 6.96** As noted earlier, non-government schools, as all schools in New South Wales, are required to implement policies around complaints that are raised by students and their families. As the Catholic Education Commission NSW explained, these policies are pursuant to the obligations of all schools to provide a safe and supportive environment for the welfare of students, as required by the NSW Education Standards Authority (NESA).
- 6.97** The committee received limited evidence from the non-government sector about its complaint and review mechanisms, however, Autism Spectrum Australia (Aspect) did provide detailed information about its complaints framework, which is applicable to students of its schools and satellite classes hosted in mainstream government and non-government schools.

⁹⁰³ Evidence, Mr Scott, 23 June 2017, p 69.

⁹⁰⁴ Evidence, Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing, NSW Department of Education, 27 March 2017, p 2.

Aspect explained that its policy directives for complaints are illustrated in a number of overarching policies for the whole organisation. These are then supplemented by a range of procedures and work instructions to report and manage complaints at the operational level, including the Complaints Management Process and Critical Incident and Complaint Investigation Process.⁹⁰⁵

6.98 The committee was also informed that beyond the internal complaints policies and procedures of the Catholic sector or individual independent schools, including Aspect schools, there are external mechanisms for investigating complaints within in the non-government sector by NESAs.

6.99 For example, in discussing allegations that a student was locked in a ‘cage’ at one of their schools, Aspect advised that NESAs had undertaken an independent investigation of the matter and found ‘no evidence of systemic noncompliance’.⁹⁰⁶ Ms Elizabeth Gadek, National Director, Aspect Education, Autism Spectrum Australia, described how NESAs had conducted its investigation and made policy decisions and recommendations to improve practice:

...[NESAs] immediately went to visit the school the next day. They had a look at the setting and could see that there was no cage. They understood that there was a child enrolled in our school, as are all our children enrolled in our school, who have individual plans and often have challenges. ...[W]e worked very much on supporting that child and being proactive to learn the skills to be able to self-manage and learn strategies to be able to cope, within even our small classrooms. But sometimes there are occasions when the safety of other children is paramount and we need to use a playground as a safe space where a child might be able to calm down. So the authority made recommendations into doing more site-specific flow charts for easy understanding by the staff, so the interpretations are there of the policies and procedures and provide easier interpretations. So the policy decisions were there.⁹⁰⁷

6.100 Of the evidence the committee received about complaints handling in non-government schools, the concerns raised by inquiry participants appear to mirror those of the government sector. These include concerns about being victimised for raising complaints, reportable conduct, and a conflict of interest with schools or authoritative bodies investigating themselves.

6.101 For example, Ms Jennifer Kemp, General Manager, Client Services, Lifestart, advised of unwelcoming behaviours experienced by their clients seeking enrolment, culminating in families feeling ‘very worried that if they make any complaint following that then that will tip the bucket for their child not being able to attend that particular school’.⁹⁰⁸ Ms Kemp described a situation where three out of four siblings were attending a Catholic school when the fourth child, who had autism, was discouraged from enrolling and the parents received subtle but strong messaging about pursuing a place at the school.⁹⁰⁹

⁹⁰⁵ Submission 112, Autism Spectrum Australia (Aspect), pp 4-5.

⁹⁰⁶ Evidence, Ms Elizabeth Gadek, National Director, Aspect Education, Autism Spectrum Australia, 27 March 2017, p 69.

⁹⁰⁷ Evidence, Ms Gadek, 27 March 2017, p 74.

⁹⁰⁸ Evidence, Ms Jennifer Kemp, General Manager, Client Services, Lifestart, 3 April 2017, p 60.

⁹⁰⁹ Evidence, Ms Kemp, 3 April 2017, p 59.

6.102 Dr Jessica Cadwallader, Project Manager, Violence Protection, People with Disability Australia, commented on the class or kind agreements between the NSW Ombudsman and non-government schools, and argued that there are elements of those agreements that warrant review.⁹¹⁰ For example, in discussing the 2012 class or kind determination with independent schools, she stated that '[t]here are a number of different problems with the way the class or kind agreements are drawn up', including provisions identifying an assault as involving 'unjustified use of physical force'.⁹¹¹ She remarked:

It would be of interest to me in whose eyes it is unjustified; is the violence that which a child may be experiencing from the child's perspective? If so, it is all unjustified and we would like to believe that violence against children with disability, and all violence against children, can never be justified really. This goes to the ongoing problem that there is a big gap when it comes to reportable conduct, and it does need to be addressed.⁹¹²

6.103 For Mr Sean Rapley, a parent, the greatest concern around complaints handling in Catholic schools is the absence of an independent body to provide oversight or conduct independent investigations into complaints of discrimination against students with disability. Of his experiences in attempting to enrol his son in a local Catholic systemic school, Mr Rapley stated:

Currently, the Catholic Education system is accountable only to themselves... The catholic systemic schools have complaints policies in place, however, this process does not include an independent body to review, assess, and act on complaints...⁹¹³

6.104 Evidence suggests that this may also be an issue with independent schools, with Ms Margaret McKay advising that the Association of Independent Schools of NSW (AISNSW), while not a system, on the one hand provides support to principals but on the other supplies independent investigators to schools, by invitation from the school, to conduct their investigations.⁹¹⁴

6.105 The AISNSW noted that 'investigators are not representing the Principal as such' and advised that schools may choose to use investigative services other than AISNSW.⁹¹⁵ It also explained that 'the impartiality of the AISNSW investigator is maintained by virtue of the fact that the investigator merely conducts the investigation and makes a recommendation', while it is the Head of Agency that determines the outcome.⁹¹⁶ However, the AISNSW advised that the Head of Agency is in fact the Principal (if the allegation of reportable conduct is not about the Principal). The AISNSW stated: 'The Head of Agency is responsible for making a decision as to the final findings of any investigation report'.⁹¹⁷

⁹¹⁰ Evidence, Dr Cadwallader, 3 April 2017, p 44.

⁹¹¹ Evidence, Dr Cadwallader, 3 April 2017, p 44.

⁹¹² Evidence, Dr Cadwallader, 3 April 2017, p 44.

⁹¹³ Submission 203, Mr Sean Rapley, parent, p 1.

⁹¹⁴ Evidence, Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW, 27 March 2017, p 64.

⁹¹⁵ Answers to questions on notice, Association of Independent Schools of NSW, 21 April 2017, p 1.

⁹¹⁶ Answers to questions on notice, Association of Independent Schools of NSW, 21 April 2017, p 1.

⁹¹⁷ Answers to questions on notice, Association of Independent Schools of NSW, 21 April 2017, p 1.

Committee comment

- 6.106** The committee notes that limited evidence was received about the non-government sector with regards to its complaint and review mechanisms. However, of the evidence we did receive, the committee recognises that there are common concerns across both sectors about aspects of the complaints process, including a fear of victimisation, visibility of reportable conduct and a potential conflict of interest in the conduct of investigations.

Other concerns about complaint and review mechanisms across sectors

- 6.107** For a number of inquiry participants, the current complaint and review mechanisms available to students and their families across government and non-government schools in New South Wales are disappointing and grossly ineffective.
- 6.108** For one inquiry participant, the complaints process represents a ‘pointless and frustrating exercise’ resulting in students and their families feeling overwhelmingly defeated. The inquiry participant stated:

To me, the meaning of the word “complaint” ...is the pointless and frustrating exercise which one undertakes, in the hope of resolving issues for their child only to end up on a never ending round a bout to nowhere land time and time again which will eventually end with the victim and their families in tears while feeling absolutely beaten down, exhausted followed by the question of why you even bothered to try.⁹¹⁸

- 6.109** This view was also reflected by another inquiry participant, who works in schools with students with disabilities and special needs and their families. They advised that, according to parents, ‘nothing changes in their child’s classroom after making a complaint’.⁹¹⁹ Moreover, the complaints process ‘seems to be more about starting a “who’s at fault” process ...rather than a conversation that opens up a dialogue and starts an exchange of ideas’, argued the inquiry participant.⁹²⁰
- 6.110** Indeed, the committee received evidence that current complaints systems are generally characterised by a lack of transparency and access to information, a lack of communication and lengthy timeframes, disempowerment and victim blaming, and inadequate reporting.

Lack of transparency and access to information

- 6.111** A number of inquiry participants raised concerns about the lack of transparency and access to information during the complaints handling process.⁹²¹
- 6.112** For example, one witness described her difficulty in reconciling the Department’s commitment to resolving complaints openly, fairly and reasonably with their own personal

⁹¹⁸ Submission 116, Name suppressed, p 35.

⁹¹⁹ Submission 127, Name suppressed, p 15.

⁹²⁰ Submission 127, Name suppressed, p 15.

⁹²¹ For example, Submission 203, Mr Sean Rapley, p 3; Submission 115, Mr David Roy, p 12.

experiences of the opposite. In particular, the inquiry participant highlighted the Department's unwillingness to share information, stating:

For what our child has been through and how we as a family have been treated over the years, this commitment too I have had to question. I was initially hopeful and open to the department's messaging from the first hearing—reassurances their complaint system is reasonable, their recent efforts will strengthen this process, the system is open and encouraging to parents, reasonably accountable and supportive—for example, parents have a choice of who they feel comfortable to raise issues with. This was extremely difficult for me, considering our experience of the complete opposite. For example, their lack of transparency about what they do. There is a lot they do not consider reasonable to share with students, parents and the public, including what they do in terms of restraint, behaviour management et cetera.⁹²²

6.113 Ms Julie Phillips, Member, Children and Young People with Disability Australia, argued that the most 'significant flaw' in reporting mechanisms across all states is the lack of transparency and the perceived priority of government departments to defend and protect their staff and practices. She explained:

All States and departments of education have some sort of reporting mechanism such as mandatory incident reporting. Some of them are external, some of them are internal. However, the most significant flaw for all of them is getting the information that is happening at the school level out. It is for sure my experience in New South Wales that the first priority of departments at all times is to always protect their own staff and defend themselves from legal complaints. They either get around some of these things by not documenting, documenting in a manner which is euphemistic and sometimes—although I hate to say it—hiding information.⁹²³

6.114 Mr Roy raised issue with the Department's attitude to transparency: 'When I said to one member of the Employee Performance and Conduct Directorate, "This is not transparent," they said, "It is to us." No, it is not transparent'.⁹²⁴ He argued that parents are being denied 'even the very right to find out the truth'.⁹²⁵

6.115 Other inquiry participants discussed the lack of access to information, particularly about complaints policies and procedures. For example, Dr Sowden and Mr Matthews, Federation of Parents and Citizens Association of New South Wales, expressed the view that the Department's complaints handling policies are not well known, well understood or easily accessible.⁹²⁶

6.116 In particular, Mr Matthews suggested that many parents do not even realise there are avenues for complaint beyond the principal, advising that '[a] lot of people think that the principal is

⁹²² *In camera* evidence, Witness B, 19 May 2017, p 1, published by resolution of the committee.

⁹²³ Evidence, Ms Julie Phillips, Member, Children and Young People with Disability Australia, 3 April 2017, p 55.

⁹²⁴ Evidence, Mr Roy, 27 March 2017, p 22.

⁹²⁵ Evidence, Mr Roy, 27 March 2017, p 33.

⁹²⁶ Evidence, Dr Sowden, and Mr Joel Matthews, Vice President, Federation of Parents and Citizens Association of New South Wales, 3 April 2017, p 33.

the be-all and end-all at the school, and that that is their last avenue of complaining about anything within schools'.⁹²⁷

- 6.117** Ms Jessica Lobo, Senior Sector Development Officer, National Disability Service, agreed, asserting that there is an 'urgent need to improve complaint handling processes about a range of matters at all levels within the school system' because 'there is very little recourse for students, their families or carers to escalate complaints if they are not able to be resolved locally... [d]ue to a lack of accessible information'.⁹²⁸
- 6.118** Indeed, while acknowledging the importance of local resolution at the school level, the NSW Ombudsman called for a greater strengthening of processes beyond the principal and school, stating:
- We support approaches to strengthen early and local resolution of complaints issues. However, in addition to local resolution, there is a need to strengthen complaint processes beyond the local school and Principal in order to deal with situations where relationships at the local level are breaking down. Such matters require the input of specialist skills to resolve. In this regard, the system for resolving concerns needs to have a much stronger emphasis on creative problem solving that is focused on repairing and maintaining the relationships between the student, family and school.⁹²⁹
- 6.119** With regard to the Department's revised complaints policy released earlier this year, some principals were encouraged by the new guidelines, particularly for parents.⁹³⁰ However, they acknowledged that the issue is communicating the policy to parents. As Ms Katrina Eyland, Principal, Havenlee School, stated: '...I do not know how well we communicate that to parents. I do not know how well the parents know that system'.⁹³¹
- 6.120** Ms Edwina Turner, Principal, The Crescent School, agreed, arguing 'that is the issue, that there is still a lot of support required', particularly given the many challenges parents of students with disabilities and special needs face.⁹³²
- 6.121** The Department advised that their website provides ample guidance about complaints handling policies and procedures in such a way that is accessible and easy to understand.⁹³³ This includes, contact details for Departmental staff should parents want to contact them directly regarding a complaint or any other matter.⁹³⁴
- 6.122** However, a number of inquiry participants challenged the ease of access to information on the Department's website, with Ms Kemp, Lifestart, stating: 'There is a lot of information, but I

⁹²⁷ Mr Matthews, 3 April 2017, p 34.

⁹²⁸ Evidence, Ms Jessica Lobo, Senior Sector Development Officer, National Disability Service, 3 April 2017, p 70.

⁹²⁹ Submission 255, NSW Ombudsman, p 4.

⁹³⁰ For example, Evidence, Ms Sheryl Bruffey, Principal, Budawang School, 19 May 2017, p 31; Evidence, Ms Katrina Eyland, Principal, Havenlee School, 19 May 2017, p 31.

⁹³¹ Evidence, Ms Eyland, 19 May 2017, p 31.

⁹³² Evidence, Ms Edwina Turner, Principal, The Crescent School, 19 May 2017, p 31.

⁹³³ Evidence, Ms Clements, 27 March 2017, p 9 and p 10; Ms Thorpe, 27 March 2017, p 16.

⁹³⁴ Evidence, Ms Clements, 27 March 2017, p 9.

am not sure that you can do anything with it, to be honest'.⁹³⁵ In fact, Ms Kemp advised that there are no contact details available to pursue a complaint:

We have supported families to do the simple thing of going to the Department of Education's website to find out how to advance that complaint but there is no phone number or form that we have been able to locate.⁹³⁶

- 6.123** Reflecting on the Department's evidence to this inquiry, Ms Lobo, National Disability Services, also could not find this information:

Last week the department appeared at this inquiry and stated that it was easy for families to contact their regional directors and we found that those details are not available on the website. I tried to locate them and could not locate them. However, there was information about the NSW Ombudsman and the Human Rights Commission and contact details for them but nothing in place around any internal processes.⁹³⁷

- 6.124** The NSW Government, nevertheless, advised that the Department is preparing 'a high level communication plan' to support the introduction of its new complaints policy. They advised that this would include a 'publicly-available fact sheet... to be published in full accessible forms... and an easy-to-follow infographic which clearly outlines the revised complaints process'.⁹³⁸

Lack of communication and lengthy timeframes

- 6.125** Another concern about the complaints process raised by inquiry participants was the lack of communication and lengthy timeframes for dealing with complaints.
- 6.126** For example, according to Children and Young People with Disability Australia, students and their families are 'frequently highly exasperated and stressed' because their concerns are often unaddressed and there is limited communication regarding how their complaint is being responded to within the complaint systems.⁹³⁹
- 6.127** Mr Peter Smith, Director, Public Schools NSW, Callaghan and Port Stephens Network, NSW Department of Education, acknowledged that there is often a communication problem during the complaints process which, for families of students with disability, is often coupled with 'a high degree of emotion, anxiety'.⁹⁴⁰ Mr Smith argued that once the emotion is dispelled, however, connections and relationships can be re-established and then 'you usually get a good outcome for that student'.⁹⁴¹ He did note that there can be a breakdown in communication

⁹³⁵ Evidence, Ms Kemp, 3 April 2017, p 63.

⁹³⁶ Evidence, Ms Kemp, 3 April 2017, p 63.

⁹³⁷ Evidence, Ms Lobo, 3 April 2017, p 72.

⁹³⁸ Submission 135, NSW Government, p 39.

⁹³⁹ Submission 159, Children and Young People with Disability Australia, p 27.

⁹⁴⁰ Evidence, Mr Peter Smith, Director, Public Schools NSW, Callaghan and Port Stephens Network, NSW Department of Education, 8 May 2017, p 48.

⁹⁴¹ Evidence, Mr Smith, 8 May 2017, p 49.

and cooperation, nonetheless, when ‘the degree of emotion is beyond our control and the control of the parent’.⁹⁴²

- 6.128** For other inquiry participants, the excessive timeframes for complaints to be responded to and then resolved was a source of frustration.⁹⁴³ For example, one inquiry participant argued that time guidelines for handling complaints are often disregarded, based on personal experience with the EPAC process. The inquiry participant stated:

It appears to me that the major concerns of EPAC is to make sure that the complaint is seen as of no consequence and the time restraints for how long the complaint should be resolved are never followed. Some complaints that I had to submit took over 12 months to come to a decision even though the complaints were serious issues.⁹⁴⁴

- 6.129** Mr Roy, parent, expressed a similar view, advising that the complaints process is long. He claimed that often it is excessively so, in order to close the window for legal action on the Department. Mr Roy asserted:

It is not quick. It is long. Once it goes beyond three years parents have to have taken legal action, otherwise they can never take legal action against the department. So often I hear stories that the department will stretch out the complaint beyond three years so that the parents feel that they are getting the matters dealt with slowly but they can no longer take any legal recourse when the department then refuses to deal with it.⁹⁴⁵

- 6.130** However, in response to concerns around communication and timing, Mr Scott, Secretary, NSW Department of Education, maintained that, for particularly serious complaints, EPAC must be given the space and time to exercise its functions thoroughly. He did acknowledge, however, the need for good communication throughout the complaints process:

I... appreciate that a parent concerned at the treatment of their child will be emotionally invested in this and will want to know what is going on. At the same time, we will need to let our teams go away and do their work, but good communication is important. Fundamentally, EPAC does important work. It is demanding work. It is particularly challenging to get the fact base right in a demanding and emotionally charged environment. We strongly believe the department needs to have and exercise this function.⁹⁴⁶

- 6.131** Ms Thorpe, EPAC, NSW Department of Education, provided further reassurance that EPAC is ‘responsive to parents’ requests and inquiries’ and maintains communication with parents at different stages of an investigation.⁹⁴⁷ She explained:

⁹⁴² Evidence, Mr Smith, 8 May 2017, p 49.

⁹⁴³ For example, Evidence, Ms Michelle McLellan, parent, 8 May 2017, p 20; Submission 159, Children and Young People with Disability Australia, p 27.

⁹⁴⁴ Submission 61, Name suppressed, pp 1-2.

⁹⁴⁵ Evidence, Mr Roy, 27 March 2017, p 22.

⁹⁴⁶ Evidence, Mr Scott, 23 June 2017, p 70.

⁹⁴⁷ Evidence, Ms Thorpe, 27 March 2017, p 8.

If it is a local management it is generally done through the principal, who is generally the officer investigating. We seek, via the school, approval from parents to interview their children, if they are able to be interviewed. We make sure that the school, which has the relationship with the family, advises the parent in a timely way of any matter if the parent is not the complainant or is not aware that an incident has occurred. We provide updates to parents on an inquiry, and we also provide them with both a phone call and a formal written response, at the end, of the outcome of the investigation.⁹⁴⁸

- 6.132** Ms Thorpe also advised that timeframes vary depending on the nature of the investigation, however, '[t]he majority of our investigations are completed within 12 months, but many of them are completed within three months'.⁹⁴⁹ She explained that delays are often due to matters being in courts and with other agencies.⁹⁵⁰

Disempowerment and victim blaming

- 6.133** For many inquiry participants, the complaints process is also disempowering and rife with victim blaming.
- 6.134** As Lifestart stated with regards to complaints handling, '...there are many occasions when students and families feel disempowered by the education system, either in their local school setting or the education bureaucracy'.⁹⁵¹
- 6.135** Indeed, this was true for parent Ms Suzanne Robertson who told the committee that navigating the complaints system is 'so disempowering for a parent' to the point where she felt 'so overwhelmed by the process that I thought that I was going to be hospitalised due to the fact that we did not have a voice...'.⁹⁵²
- 6.136** Many inquiry participants spoke of the immense power imbalance when engaging in the complaints process, stating that 'schools hold all the power'⁹⁵³ while complainants are not 'equitably positioned',⁹⁵⁴ thereby promoting an 'aggressive rather than a collaborative process' to find the best outcomes for students.⁹⁵⁵
- 6.137** Inquiry participants shared that the power imbalance is most strikingly apparent in face to face situations with the school or Department. As one inquiry participant advised:

...school staff vastly outnumber parents in formal complaint meetings. A parent might find themselves in a room with a Principal, AP [Assistant Principal], LST [Learning and Support Teacher], School Counsellor, Teacher and SSLO [School Learning Support Officer] and if the complaint is elevated to department, meetings

⁹⁴⁸ Evidence, Ms Thorpe, 27 March 2017, p 8.

⁹⁴⁹ Evidence, Ms Thorpe, 23 June 2017, p 67.

⁹⁵⁰ Evidence, Ms Thorpe, 27 March 2017, p 8.

⁹⁵¹ Submission 164, Lifestart, p 21.

⁹⁵² Evidence, Ms Robertson, 8 May 2017, p 17.

⁹⁵³ Evidence, Ms Hutchinson-West, 3 April 2017, p 49; Evidence, Dr Issa, 27 March 2017, p 25.

⁹⁵⁴ *In camera* evidence, Witness B, 19 May 2017, p 1, published by resolution of the committee.

⁹⁵⁵ Evidence, Mr Roy, 27 March 2017, p 24.

can also include Student Services Officer. One mother said she felt bullied at a meeting where her voice and opinions were in the minority.⁹⁵⁶

- 6.138** This echoed the experience of Dr Melanie Heyworth, parent, who highlighted the underlying tone of ‘us versus them’ in her meetings with her son’s school. She spoke of the emotionally and intellectually confronting encounters with the school principal, despite being in a position to advocate, and drew attention to those who may not be in that position but needs to have their child’s needs met. Dr Heyworth stated:

I think I am a very empowered and educated person, and I found the conversations I needed to have with principals and systems when my son was in school confronting both emotionally and intellectually. Often it was me against a number of people from the system on the other side of the table. Ostensibly we were all working together, but it was very much me and what I wanted for my son versus the rest of the school. I believe that I am in a great position to advocate for my son, but the majority of parents are not in nearly as good a position as I am to advocate. It is those children and parents who need the support of things like this to make a difference because they may not be as educated nor as able to articulate⁹⁵⁷.

- 6.139** Other inquiry participants discussed being branded as the problem for raising concerns on behalf of their children, with Ms Suzanne Becker, Chief Executive Officer, Lifestart, stating that if you make a complaint ‘you are labelled a neurotic, difficult or challenging parent’.⁹⁵⁸
- 6.140** One inquiry participant shared that in pursuing local resolution of their complaint, they dealt with ‘patronising tones, the eye rolls, the attempts to shrug me off, the insults to my intelligence, the stupid questions and the attitudes of what would you know and yet it still got me nowhere’.⁹⁵⁹ Another found it ‘distressing’ that the Department’s new complaints policy would have a section on what to do when complainants behave inappropriately and yet do not offer the same recognition that ‘we too can experience similar behaviour, similar impacts to our wellbeing and our children’s’.⁹⁶⁰

Data collection and incident reporting

- 6.141** Another significant issue for stakeholders was the inadequacy of complaint data and the capacity for incident reporting at the school level.
- 6.142** For example, Ms Gotlib, Children and Young People with Disability Australia, raised concerns about ‘picking up on the discrepancy between what comes to attention and what is actually occurring’.⁹⁶¹ She explained: ‘Often things may not end up being a formal complaint so they are not recorded anywhere. We were very interested to see what records the department had’.⁹⁶²

⁹⁵⁶ Submission 127, Name suppressed, p 14.

⁹⁵⁷ Evidence, Dr Melanie Heyworth, Parent, 27 March 2017, p 25.

⁹⁵⁸ Evidence, Ms Becker, 3 April 2017, p 64.

⁹⁵⁹ Submission 116, Name suppressed, p 35.

⁹⁶⁰ *In camera* evidence, Witness B, 19 May 2017, p 2, published by resolution of the committee.

⁹⁶¹ Evidence, Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, 3 April 2017, p 55.

⁹⁶² Evidence, Ms Gotlib, 3 April 2017, p 55.

- 6.143** However, the Department advised that it does not currently have systems in place to collect data on all complaints.⁹⁶³ Ms Thorpe stated that while EPAC collects ‘detailed data on complaints of allegations of a child protection nature or of misconduct or of inquiries that come to [EPAC]’, it does not ‘collect all data on localised complaints of a general nature’.⁹⁶⁴ Ms Thorpe explained:
- If someone has a concern about resourcing or too much homework or something else at school, or a neighbour is cross about the behaviour of schoolchildren walking past their property, I cannot collect that data.⁹⁶⁵
- 6.144** Ms Thorpe confirmed that principals are not required to ‘raise every complaint that comes in’, advising that such complaints are presented in many different ways and are often dealt with ‘locally at the school on a face-to-face basis’.⁹⁶⁶
- 6.145** Ms Thorpe did acknowledge that data collection is a ‘significant issue for the organisation’ if trends or weaknesses in service delivery are to be identified.⁹⁶⁷ However, she stated that while ‘we have quite a lot of work to do to be able to work out an effective way of collecting all complaints’, the Department is equally conscious of the very large system it operates where ‘people often complain when they see their principal or raise their concerns at the school’.⁹⁶⁸ Ms Thorpe advised that ‘[a]t this stage the department has not at the complaint level had the ability to collect that information...’.⁹⁶⁹
- 6.146** Ms Thorpe noted that the NSW Ombudsman has ‘previously raised concerns over a number of years about our capacity to collect all complaints data’,⁹⁷⁰ which the NSW Ombudsman confirmed. In its submission to the 2010 Upper House inquiry into the provision of education to students with a disability or special needs (2010 Upper House inquiry), the NSW Ombudsman stated that it had ‘raised concerns about the lack of systems in place to record the numbers of complaints received across the department about particular issues’ thereby making it difficult to monitor complaint trends or identify systemic issues.⁹⁷¹
- 6.147** The NSW Ombudsman advised that ‘the issue has continued to remain a problem’⁹⁷² but acknowledged that the Department is developing a complaint handling database which is intended to provide ‘cluster-wide system for capturing and analysing complaint information generally’ and for ‘analysing trends in relation to specific cohorts of students’, including students with disabilities and special needs.⁹⁷³

⁹⁶³ Answers to questions on notice, NSW Department of Education, 21 April 2017, p 6.

⁹⁶⁴ Evidence, Ms Thorpe, 27 March 2017, p 15.

⁹⁶⁵ Evidence, Ms Thorpe, 27 March 2017, p 15.

⁹⁶⁶ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁶⁷ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁶⁸ Evidence, Ms Thorpe, 27 March 2017, p 5.

⁹⁶⁹ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁷⁰ Evidence, Ms Thorpe, 27 March 2017, p 15.

⁹⁷¹ Submission 255, NSW Ombudsman, p 2.

⁹⁷² Submission 255, NSW Ombudsman, p 2.

⁹⁷³ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 78.

- 6.148** Indeed, the Department informed that, as part of a whole of government reform around complaints handling, as referred to earlier in this chapter, a ‘no-wrong-door policy’ will be implemented to enable complaints to be ‘on every website of every key agency’.⁹⁷⁴ Ms Thorpe told the committee that there will be ‘a system behind that that will be able to collect that information and that way we will not only have the numbers of all sorts of complaints but also we will be able to analyse what types of complaints are coming in’.⁹⁷⁵
- 6.149** Ms Thorpe gave assurances that issues around data collection would be corrected in the near future:
- ...that is something that we will have rectified by next year once we get a system in place that is consistent, which will be a great improvement on our ability to know exactly what happens with those matters that are of that sort of nature.⁹⁷⁶
- 6.150** Within the context of data collection, inquiry participants also discussed incident reporting at the school level.
- 6.151** Mr Roy, parent, for example, asserted that there is no requirement of the school to record and report incidents to parents, raising concerns about the potential harm for students if parents are not informed:
- Schools do not need to keep records. Often they are too busy. Schools do not need to release records to parents. If you look at the department policy they do not need to inform parents if there has been an injury to their child. Children with disabilities often fall and have concussions. If they then fall again in the classroom that concussion could kill them. The parents need to be aware of that so that seven hours later if their child has fainted they realise what is going on. There is no requirement.⁹⁷⁷
- 6.152** However, Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals Association, indicated that schools do record and report, stating that ‘as part of our processes we report even minor incidents’.⁹⁷⁸
- 6.153** Ms Robertson argued, however, that to report every single day-to-day incident ‘is above and beyond what we would be able to manage’. Ms Anne Flint, Executive Member, Special Education Principals and Leaders Association, agreed, advising that ‘staff... report a fraction of incidents that occur to them’,⁹⁷⁹ while Mr Peter Skinner, President, Special Education Principals and Leaders Association, adding that ‘...our members are indicating that they do not have enough time to report the number of incidents in schools’.⁹⁸⁰
- 6.154** Moreover, Ms Meredith Fawcett, Executive Member, NSW Secondary Principals Council, stated that the priority to report an incident may vary but that the foremost priority is in teaching and learning. She explained:

⁹⁷⁴ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁷⁵ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁷⁶ Evidence, Ms Thorpe, 27 March 2017, p 11.

⁹⁷⁷ Evidence, Mr Roy, 27 March 2017, p 28.

⁹⁷⁸ Evidence, Ms Robertson, 27 March 2017, p 49.

⁹⁷⁹ Evidence, Ms Flint, 27 March 2017, p 50.

⁹⁸⁰ Evidence, Mr Skinner, 27 March 2017, p 50.

...a teacher might get her hair pulled as a student goes by. There is not a priority to report that but people may think that is a threat or intimidation. So there are those things that happen in schools but the priority for us is in teaching and learning and meeting the needs of our students.⁹⁸¹

6.155 In addition, some principals argued that incident reporting in this way is not particularly helpful, with Mr Matthew Johnson, Vice President, Special Education Principals and Leaders Association, advising: ‘Going on the number of reports can give you the completely wrong information’.⁹⁸²

6.156 Ms Flint demonstrated this by describing the nature of many students with disabilities and special needs as like ‘a rolling incident’.⁹⁸³ Ms Flint explained:

That is the student. It is not about reporting something different; it is about the student and all of their complexities. The teachers, the principal and the learning support officers are doing their best to work with, manage and change those behaviours...⁹⁸⁴

Committee comment

6.157 The committee notes the many other concerns of inquiry participants about the complaints system across the sectors. The committee is discouraged by views that engaging in the complaints process is distressing and futile.

6.158 In particular, the committee notes concerns around the lack of transparency and access to information for complainants, as well as a lack of communication throughout the process. The committee maintains that resolutions are best arrived at and accepted if there is transparency in decision making, readily available information about the process, and open channels of communication.

6.159 The committee notes that the Department’s new complaints policy, *School Community and Consumer Complaint Procedure*, is a positive move towards addressing some of these concerns, however, the committee believes that its release needs to be supported by widespread promotion to schools and school communities. In addition, the committee remains concerned that the current complaint mechanisms for government schools are inadequate and in need of urgent reform.

⁹⁸¹ Evidence, Ms Meredith Fawcett, Executive Member, NSW Secondary Principals’ Council, 27 March 2017, p 50.

⁹⁸² Evidence, Mr Johnson, 27 March 2017, p 50.

⁹⁸³ Evidence, Ms Flint, 27 March 2017, p 50.

⁹⁸⁴ Evidence, Ms Flint, 27 March 2017, p 50.

Recommendation 36

That the NSW Department of Education reform its complaints policy so that:

- plain English advice is provided to parents about the right to complain
 - there is an independent complaints process for a school's unreasonable refusal to enrol a child with a disability or to make reasonable adjustments
 - no principal investigates a complaint against themselves.
-

6.160 The committee is mindful that the new complaints policy does not detail the EPAC process. While the committee is not aware whether a comparable policy document exists for this process, the committee believes that parents and community members would benefit from a similar simple and clear policy document about the complaints process engaged for allegations of misconduct and reportable conduct.

6.161 Likewise, the committee believes that a policy document for schools in the non-government sector about complaints of this nature would be equally beneficial for parents and community members. The committee notes that, as discussed earlier in the chapter, the NSW Education Standards Authority (NESA) has a role to play as an external mechanism for investigating complaints in the non-government sector. The committee also notes that, more broadly, NESA must ensure that teacher standards are met and maintained.

6.162 The committee therefore recommends that policy documents outlining the complaint procedures for allegations of misconduct or reportable conduct, including those referred to EPAC or to NESA, be developed to set clear guidelines and expectations for external complainants, such as parents and carers.

Recommendation 37

That the NSW Department of Education and the NSW Education Standards Authority develop policy documents outlining the complaint procedures for complaints regarding allegations of misconduct or reportable conduct to set clear guidelines and expectations for the benefit of external complainants.

Recommendation 38

That the NSW Department of Education, in its procedures for complaints regarding allegations of misconduct or reportable conduct:

- must notify parents if a matter involving their child is referred to the Employee Performance and Conduct Directorate (EPAC)
 - establish a process for parents to refer a matter to EPAC
 - inform parents of the outcome of any EPAC investigation involving their child
 - maintain existing industrial entitlements and the right to due process for staff employed by the Department.
-

- 6.163** The committee notes evidence from parents and families who feel disempowered in the complaints process and is concerned by reports of victim blaming. The committee acknowledges that there is at present an ‘us versus them’ mentality within the complaints system.
- 6.164** The committee recognises the significant gaps in complaint data collection. The committee notes concrete moves within the Department to enhance and improve data collection as part of the whole of government reform in this area.

Providing additional support to parents

- 6.165** As outlined in Chapter 2, parents and carers must often navigate through significant challenges in raising children with a disability or special needs. Given the breadth of concerns raised by inquiry participants about the complaints processes, particularly from the perspective of the complainant, some discussed the need for additional support for parents and carers when they engage in the complaints system.
- 6.166** For example, Ms Ruth Callaghan, General Manager, Stakeholder Relations, Northcott, argued that some parents ‘need someone to simply walk alongside them’.⁹⁸⁵ She stated that often parents can identify an issue or a problem but do not know how to advocate for their child or ‘navigate the bureaucracy’.⁹⁸⁶
- 6.167** For another inquiry participant, they believed that additional support for parents could come in the form of an independent body to ‘accompany the parents and represent the interest of the student with disability’.⁹⁸⁷ The independent body could then also be given the power to ‘investigate and discipline employees should they fail to meet their obligations under the DSE [Disability Education Standards]’.⁹⁸⁸
- 6.168** Even Mr Scott, Secretary, NSW Department of Education, acknowledged that there might be some complaint situations where a case manager may be needed for parents to engage.⁹⁸⁹
- 6.169** In any event, Ms Merchant, NSW Department of Education, recognised that training in case management would be effective in providing additional support to parents and families. However, she noted it would be an additional consideration for principals that would need to be balanced and managed.⁹⁹⁰

⁹⁸⁵ Evidence, Ms Ruth Callaghan, General Manager, Stakeholder Relations, Northcott, 3 April 2017, p 49.

⁹⁸⁶ Evidence, Ms Callaghan, 3 April 2017, p 49.

⁹⁸⁷ Submission 188, Name suppressed, p 2.

⁹⁸⁸ Submission 188, Name suppressed, p 2.

⁹⁸⁹ Evidence, Mr Scott, 23 June 2017, p 61.

⁹⁹⁰ Evidence, Ms Carolynne Merchant, Director, Public Schools NSW, Southern Tablelands Network, NSW Department of Education, 19 May 2017, p 46.

Committee comment

- 6.170** As noted in Chapter 2, the committee acknowledges that parents of students with disability would benefit greatly from additional support in navigating all aspects of the education system, including the complaints process.
- 6.171** The committee welcomes suggestions that this support could come in the form of a case manager to assist parents in engaging with schools or the Department throughout the process.
- 6.172** The committee therefore recommends that the Department establish a case manager role, possibly at the regional level within the Department, to assist parents and carers throughout the complaints process, and potentially in other aspects of the education system, including at the enrolment stage.

Recommendation 39

That the NSW Department of Education establish a case manager role to assist parents and carers in navigating all aspects of the education system, including the enrolment and complaints processes. In particular, this case manager should be in contact with each family during the enrolment process in order to facilitate well informed choices.

Is there a need for an independent authority?

- 6.173** Throughout the chapter, inquiry participants referred to a need for an independent authority to address the many and varied concerns about current complaint and review mechanisms available across the government and non-government sectors. As Mrs Meaghan Sweeney argued: ‘If complaints and reviews were to be effective and protect vulnerable students in the process it would be more successfully delivered by an independent agency’.⁹⁹¹
- 6.174** According to Children and Young People with Disability, ‘[f]amilies... report that schools and education authorities often become highly defensive, adversarial and litigious in response to complaints’, where it is rarely the experience of students with disabilities that an acceptable outcome or resolution is reached. Therefore, they argued for the establishment of ‘a timely, independent complaint mechanism for schools in New South Wales’.⁹⁹² As Ms Julie Phillips, Member, Children and Young People with Disability Australia, stated: ‘...you need a body that has absolutely no conflict of interest. It just cannot be within the Department of Education. It has proven itself time and again not to have the best interests of kids with disabilities at heart’.⁹⁹³
- 6.175** Some, such as Mrs Gina Wilson-Burns, the parent of a 13 year old, suggested that an independent body was necessary to assist vulnerable students and families whose rights have

⁹⁹¹ Submission 147, Mrs Meaghan Sweeney, p 2.

⁹⁹² Submission 159, Children and Young People with Disability, pp 28-29.

⁹⁹³ Evidence, Ms Phillips, 3 April 2017, p 56.

been infringed without the need for placing further pressure on already tenuous relationships with schools. Mrs Gina Wilson-Burns asserted:

An independent body should be developed, at least in the short term, to assist families and vulnerable students to manage the breaches of human rights, education standards and discrimination laws they may face on a regular and ongoing basis. To expect families to pursue these through the formal DET [NSW Department of Education] complaint processes and further damage often fraught relationships is unreasonable. The establishment of an independent body may actually see many of these issue resolved and enhanced with long term benefits for many students.⁹⁹⁴

6.176 Another inquiry participant called for an independent authority to provide a measure of accountability, to ensure that processes are transparent and decision makers are answerable for their actions:

Create an independent watchdog or a panel that parents can turn to when the Department of Education and the schools are not doing their job in order to push for more accountability. Too many people are not doing the right thing by students and their families and are not held accountable for their actions.⁹⁹⁵

6.177 Mr Roy, parent and academic, expressed a similar view, stating that ‘part of the issue in particular in the public system is that the political masters are linked into the public system so they are caught with not being able to have an overview’. He argued that the Minister for Education has a role to play across all sectors and should thus be distanced from the Department in this regard:

...there almost needs to be a separation from the Ministry of Education with the department so that the Minister can be protected and also able to overview properly and deal with the issues of independent, Catholic and special schools.⁹⁹⁶

6.178 Likewise Ms Suzanne Becker, Chief Executive Officer, Lifestart, acknowledged the need for a uniform complaints system across all sectors, stating: ‘It is not just about the Department of Education. That complaints process should cut across all education sectors—Catholic, independent and public school systems’.⁹⁹⁷

6.179 Ms Becker Lifestart, along with other inquiry participants, believed that this role would most appropriately be fulfilled by the NSW Ombudsman. Ms Becker stated:

Given the role of the Ombudsman across the whole disability sector—across the whole community—we think that the Ombudsman’s office is well suited to manage these complaints. There is a system in place, and it should be able to be implemented fairly easily... It would be independent. It would be reporting straight back to Government so there would be no barriers for the Parliament to hear what is happening.⁹⁹⁸

⁹⁹⁴ Submission 173, Mrs Gina Wilson-Burns, p 3.

⁹⁹⁵ Submission 116, Name suppressed, p 40.

⁹⁹⁶ Evidence, Mr Roy, 27 March 2017, p 33.

⁹⁹⁷ Evidence, Ms Becker, 3 April 2017, p 62.

⁹⁹⁸ Evidence, Ms Becker, 3 April 2017, p 60; see also Submission 151, Family Advocacy, p 20.

The role of the NSW Ombudsman

- 6.180** The NSW Ombudsman is an independent watchdog that has jurisdiction over both government and non-government sector agencies under different legislation, including the *Ombudsman Act 1974* (NSW).⁹⁹⁹ This oversight extends to all schools in New South Wales.¹⁰⁰⁰
- 6.181** The NSW Ombudsman performs a range of complaint, oversight and investigative functions in various areas, including employee-related child protection.¹⁰⁰¹ In this regard, the NSW Ombudsman has the power to ‘directly investigate any reportable allegation, as well as the involved agency’s handling of a reportable allegation’.¹⁰⁰²
- 6.182** Mr Scott, Secretary, NSW Department of Education, acknowledged the ability of the NSW Ombudsman to independently investigate and scrutinise matters across all sectors:

The Ombudsman’s office clearly has developed considerable expertise in this area. They exercise the role that they play with us similarly for the non-government sector as well. There are strong, clear reporting lines and responsibilities that flow through the Ombudsman’s office on it. Their ability to dive in deep—they are not fettered—and their ability to exercise their judgement to review the work that has been done but then alternatively to dive in deep, rests with them.... the Ombudsman, like the Auditor-General, clearly has the ability ...to look at this work, to provide a critique, to report publicly, openly and independently about these kinds of processes.¹⁰⁰³

- 6.183** However, in discussing an extension of the NSW Ombudsman’s function to investigate potentially any complaint as an independent authority within the complaints system, Mr Scott expressed concern over the ‘trigger’ of this ability based on an arbitrary threshold:

The difficulty around whether there should be some external mechanism that can be triggered is what the trigger point to that would be. Invariably in these often emotionally charged cases people will be upset. They will be disappointed and they will be unhappy if it does not run their way—not just parents but I imagine our staff would be as well. You suggest in ‘a handful of cases’ or in some cases there should be that mechanism. What the threshold would be and who the decider would be of that are problematic.¹⁰⁰⁴

- 6.184** In particular, Mr Scott cautioned that an expectation that the NSW Ombudsman could be tapped into for this purpose could unleash ‘massive unintended consequences’.¹⁰⁰⁵ He maintained that there is ‘a thoroughness and a diligence’ in the current mechanisms provided by EPAC, so to add another mechanism on top that is potentially based on a sense of selectiveness may only exacerbate current frustrations. He stated:

That if in fact you put another mechanism on top of that, what might you unleash? If in fact you have a mechanism whereby there is a sense of some selectiveness, where

⁹⁹⁹ Submission 135, NSW Government, p 40.

¹⁰⁰⁰ NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 64.

¹⁰⁰¹ Submission 255, NSW Ombudsman, p 1.

¹⁰⁰² NSW Ombudsman, *Inquiry into behaviour management in schools* (August 2017), p 65.

¹⁰⁰³ Evidence, Mr Scott, 23 June 2017, p 72.

¹⁰⁰⁴ Evidence, Mr Scott, 23 June 2017, p 72.

¹⁰⁰⁵ Evidence, Mr Scott, 23 June 2017, p 72.

some get chosen and others do not, then again I wonder if frustration and bitterness towards the system will get exacerbated.¹⁰⁰⁶

- 6.185** Mr Scott argued that the current system ensures a ‘thoroughness of review’ and so the challenge is to emphasise the strengths of this system:

I suppose what I am saying is that the best thing you can do is to look to provide reassurance around the robustness of the system. I would say that there are those mechanisms that are already in place through Ombudsman’s reviews and Auditor-General’s reviews, which can go centrally to the fairness and the efficacy of the process, the thoroughness of the review where it has taken place and, of course, on the child protection matters, the Ombudsman does and can dive into the detail.¹⁰⁰⁷

- 6.186** Ms Thorpe, EPAC, NSW Department, acknowledged that, ultimately, the reality is that some complaints will result in an outcome not expected by students and their families, and that this needs to be recognised as distinct from flaws in the process:

The reality is that there will be some complaints that people are not going to be happy with the outcome because they cannot be given what they want because of the particular policies of the organisation in some circumstances. There is a big difference between someone having their complaint handled badly and not getting the answer that they would like.¹⁰⁰⁸

- 6.187** Nevertheless, the Department maintained its commitment to the fundamental goal of complaint mechanisms within the education system, with Mr Scott declaring: ‘Nothing is more important to us... than the health, safety and wellbeing of the children in our care. That is the overwhelming focus of Ms Thorpe and her team’.¹⁰⁰⁹

Committee comment

- 6.188** The committee acknowledges the concerns of inquiry participants that have informed the position that there is a need for an independent authority within the complaints system.
- 6.189** While the committee appreciates these concerns, the committee notes the views of the Department about arbitrary triggers for activating an independent process, as well as adding another mechanism on top of what is currently available within the system.
- 6.190** The committee believes that the NSW Ombudsman provides sufficient oversight of current complaint mechanisms, and notes their authority to directly investigate any allegation as well as the handling of that investigation.
- 6.191** The committee believes that strengthening and enhancing all aspects of the current complaints process, as identified and suggested throughout this report, will negate the need for an independent authority to operate beyond the scope of the external mechanisms already in place.

¹⁰⁰⁶ Evidence, Mr Scott, 23 June 2017, p 72.

¹⁰⁰⁷ Evidence, Mr Scott, 23 June 2017, p 72.

¹⁰⁰⁸ Evidence, Ms Thorpe, 27 March 2017, p 6.

¹⁰⁰⁹ Evidence, Mr Scott, 23 June 2017, p 69.

Appendix 1 Submissions

No	Author
1	Privacy Commissioner New South Wales
2	Name suppressed
3	Dyslexia Support NSW Mid North Coast
4	Mr Brett Holland
4a	Mr Brett Holland
5	Ms Janine Agzarian
6	Mr Allen Slater
7	Name suppressed
8	Ms Jemma Burrows
9	Confidential
10	Ms Lyn Collins
11	Confidential
11a	Confidential
12	Confidential
13	Name suppressed
14	XXYY Australia
15	Name suppressed
16	Mrs Misa Alexander (Partially confidential)
17	Epilepsy Action Australia
18	Ms Rachael Sowden (Partially confidential)
19	Name suppressed (Partially confidential)
20	Name suppressed (Partially confidential)
21	Name suppressed
22	Name suppressed (Partially confidential)
23	Association of Independent Schools of New South Wales
24	Name suppressed (Partially confidential)
25	Ms Helena Cairns
26	Name suppressed
27	Name suppressed
28	Name suppressed
29	Name suppressed
30	Ms Elizabeth Levar

No	Author
31	Ms Julie Parsons
32	Name suppressed
33	Name suppressed
34	Name suppressed
35	Name suppressed
36	Mr Bruce Bennett
37	Name suppressed
38	Ms Jan Pennisi
39	Mrs Jo OBrien
40	Name suppressed
41	Ms Kathy Dobinson
42	Name suppressed
43	Name suppressed
44	Ms Karen Burgess
45	Name suppressed
46	Confidential
47	Ms Aarti George
48	Name suppressed
49	Berridale Public School
50	Miss Stephanie Fawzy
51	Name suppressed
52	Name suppressed (Partially confidential)
53	Ms Lynda Tyson
54	Name suppressed
55	Name suppressed (Partially confidential)
56	Name suppressed
57	Name suppressed (Partially confidential)
58	Ms Yvette Edgell
59	Ms Marie Van-Beek
60	Name suppressed
61	Name suppressed (Partially confidential)
62	Name suppressed
63	Sussex Inlet Public School
64	Name suppressed

No	Author
65	Ms Robyn Christofides
66	Northcott
67	Name suppressed
68	Confidential
69	Eastern Suburbs Teachers Association
70	Name suppressed
71	Ms Robyn Armstrong
72	Name suppressed
73	Name suppressed
74	Name suppressed
75	Name suppressed (Partially confidential)
76	Name suppressed
77	Ms Julie Ross
78	Name suppressed (Partially confidential)
79	Mr Philip Hughes
80	Name suppressed
81	Ms Cat Black
82	Ms Bernadette Black
83	Name suppressed
84	Ms Debra Goodsir
85	Name suppressed
86	Mr Jack Galvin Waight
87	Name suppressed
88	Fragile X Association of Australia Inc
89	Confidential
90	Dr Coral Kemp
91	Name suppressed
92	Mrs Mary Clifford
93	Mr Steven Clifford
94	Ms Megan Boukaseff
95	Mrs Vanda Smith
96	Mrs Helen Moore
97	Name suppressed
98	Mrs Karen Woods

No	Author
99	Name suppressed
100	Name suppressed
101	Miss Catherine Milverton
102	Name suppressed
103	Ms Bronwyn Watt (Partially confidential)
104	Name suppressed
105	Carers NSW
106	Mr Chris Hauritz
107	Ms Jennifer Mace
108	Name suppressed (Partially confidential)
109	Ms Kathryn Deacon
110	Name suppressed
111	Macquarie University Special Education Academics
112	Autism Spectrum Australia (Aspect)
113	Name suppressed
114	Name suppressed
115	Mr David Roy
115a	Mr David Roy
116	Name suppressed (Partially confidential)
117	Centre for Children and Young People, Southern Cross University
118	Clarke Road School P&C Association
119	Australian Association of Special Education, NSW Chapter
119a	Australian Association of Special Education, NSW Chapter
120	Name suppressed
121	NSW Secondary Principals' Council
122	Name suppressed
123	Name suppressed
124	Name suppressed
125	Speech Pathology Australia
126	Federation of Parents and Citizens Associations of New South Wales (Partially confidential)
126a	Federation of Parents and Citizens Associations of New South Wales
127	Name suppressed
128	Name suppressed (Partially confidential)

No	Author
129	UNSW Sydney Special and Inclusive Education Group
130	Confidential
131	UNSW Australia Kingsford Legal Centre
132	The Royal Australasian College of Physicians
133	Catholic Education Commission NSW
134	Confidential
134a	Confidential
135	NSW Government
136	Intellectual Disability Rights Service Inc.
137	Mr Henry Rajendra (Partially confidential)
138	Name suppressed
139	Mr Matthew Palmer
140	Name suppressed
141	Mr Robert Deacon
142	Name suppressed
143	Australian Education Union New South Wales Teachers Federation Branch
144	Confidential
144a	Name suppressed (Partially confidential)
145	Name suppressed
146	Name suppressed
147	Mrs Meaghan Sweeney (Partially confidential)
148	Confidential
149	Ms Deanna Harradine, Ms Louise Penny, Mrs Skye Rose and Name suppressed (Partially confidential)
150	Name suppressed (Partially confidential)
151	Family Advocacy
152	Ms Carol Barnes
153	Special and Inclusive Education Team, The Sydney School of Education & Social Work
154	Uniting
155	NSW Primary Principals' Association
156	Vision Australia
157	The Professional Association for Learning Support Inc
158	Learning Difficulties Coalition of NSW Inc
159	Children and Young People with Disability Australia

No	Author
160	Special Education Principals' and Leaders' Association (SEPLA) NSW
161	National Disability Services
162	Name suppressed
163	Hear For You
164	Lifestart
165	Specific Learning Difficulties Association of (SPELD) NSW
166	NSW Independent Education Union
167	Youth Action
168	South Western Sydney Primary and SSP Principals
169	Name suppressed (Partially confidential)
170	Name suppressed
171	Bega High School
172	Name suppressed
172a	Name suppressed (Partially confidential)
173	Mrs Gina Wilson-Burns
174	Name suppressed
175	Confidential
176	Mr Rendle Hannah
177	Dr Sally Howell
178	Mr David Ferguson
179	Name suppressed
180	Ms Allison Gentle
181	Coonabarabran High School - Staff
182	Name suppressed
183	Ms Claudia Vera
184	Name suppressed
185	Ms Barbara Kirszman
186	Name suppressed
187	Duval High School
188	Name suppressed
189	Ms Sue Muir
190	Name suppressed
191	Office of the Advocate for Children and Young People
192	Name suppressed

No	Author
193	Mrs Angela Johnson
194	Name suppressed (Partially confidential)
195	Smithfield Public School
196	Name suppressed
197	Name suppressed (Partially confidential)
198	People with Disability Australia
199	Public Service Association of NSW
200	Occupational Therapy Australia
200a	Occupational Therapy Australia
201	Name suppressed (Partially confidential)
202	Confidential
202a	Confidential
203	Mr Sean Rapley (Partially confidential)
204	Name suppressed
205	Name suppressed (Partially confidential)
206	Sir Joseph Banks High School (Partially confidential)
207	Name suppressed
208	Royal Institute for Deaf and Blind Children
209	Rooty Hill High School (Partially confidential)
210	Name suppressed
211	Confidential
212	Clairgate Public School
213	Confidential
214	Girraween Public School
215	Name suppressed
216	Penshurst Public School
217	Avalon Public School
218	Name suppressed
219	Mr Geoffrey Boniface
220	Name suppressed
221	Ms Lisa Golding
222	Name suppressed
223	Name suppressed
224	Hobartville Public School

No	Author
225	Ms Robyn Scragg
226	Name suppressed
227	Name suppressed
228	Confidential
229	Name suppressed
230	Ms Ruth Short
231	Mr Theo Bougatsas
232	Name suppressed
233	Name suppressed
234	Engadine High School
235	Confidential
236	Name suppressed (Partially confidential)
237	Confidential
238	Confidential
239	Name suppressed
240	Ms Sandra Hirsch
241	Name suppressed (Partially confidential)
242	Name suppressed
243	Narooma High School Federation Workplace Committee
244	Name suppressed
245	Name suppressed
246	Name suppressed
247	Confidential
248	Name suppressed (Partially confidential)
249	Ryde Macquarie Teachers Association
250	Mrs Cassandra Kavanagh (Partially confidential)
250a	Confidential
251	Erskine Park High School
252	Ms Rebecca Taylor
253	Name suppressed (Partially confidential)
254	Confidential
255	NSW Ombudsman
256	Confidential
257	Name suppressed

No	Author
258	Merrylands East Public School (Partially confidential)
259	Education and Disability Advocacy NSW (Partially confidential)
260	Name suppressed
261	Name suppressed
262	Confidential
263	Confidential
264	Ms Lesley Atfield
265	Ms Janine Kitson
266	Ms Anita Terry
267	Name suppressed
268	Ms Lisa Jencsok
269	Name suppressed
270	Confidential
271	Name suppressed
272	Name suppressed
273	Name suppressed
274	Name suppressed
275	Confidential
276	Name suppressed
277	Ms Lynnette Miller
278	Ms Susan Walker
279	Name suppressed
280	Name suppressed
281	Name suppressed
282	Ms Annie Farmer
283	Ms Deborah Boileau Little
284	Name suppressed
285	Name suppressed
286	Confidential
287	Name suppressed
288	Name suppressed
289	Name suppressed
290	Name suppressed
291	Ms Christa Mood

No	Author
292	Name suppressed
293	Mr Allan West (Partially confidential)
294	Confidential
295	Confidential
296	Confidential
297	Ms Kathryn Bellach
298	Mr Michael de Wall
299	Ms Karen Osborne
300	Name suppressed
301	Name suppressed
302	Name suppressed
303	Ms Sarah Steele
304	Confidential
305	Ms Linda Steward
306	Confidential
307	Name suppressed
308	Name suppressed
309	Confidential
310	Confidential
311	Confidential
312	Confidential
313	Name suppressed
314	Mr Paul Regan
315	Ms Amber McCook
316	Name suppressed
317	Ms Janel Gayford
318	Name suppressed
319	Name suppressed
320	Mr Waine Donovan
321	Name suppressed
322	Mr John Deehan (Partially confidential)
323	Name suppressed
324	Name suppressed
325	Name suppressed

No	Author
326	Ms Amanda Wells
327	Ms Kamini Singh (Partially confidential)
328	Ms Sarah Kay
329	Name suppressed
330	Name suppressed
331	NSW Teachers Federation Representatives of Crookwell Public School (Partially confidential)
332	Crookwell Teachers Association
333	Confidential
334	Name suppressed
335	Name suppressed
336	Confidential
337	Tullamore Central School
338	Name suppressed
339	Parkes High School
340	Confidential
341	Name suppressed
342	Name suppressed
343	Name suppressed
344	Homebush Public School
345	Bomaderry High School
346	Northlakes High School (Partially confidential)
347	Mr Mercurius Goldstein
348	Woy Woy-Ettalong Teachers Federation
349	Name suppressed
350	Name suppressed
351	Name suppressed (Partially confidential)
352	Name suppressed
353	Karonga SSP
354	Fairfield Public School
355	Name suppressed
356	Name suppressed
357	Name suppressed
358	Confidential

No	Author
359	Confidential
360	Mr Elvin Cansino
361	Mr Merrill Sells
362	Ms Susan Greaves
363	Name suppressed
364	Name suppressed
365	Confidential
366	Name suppressed
367	Confidential
368	Name suppressed (Partially confidential)
369	Confidential
370	Name suppressed
370a	Name suppressed
371	Homebush Boys High School
372	Name suppressed
373	Barrack Heights Public School
374	Name suppressed
375	Name suppressed
376	Name suppressed
377	Ms Dianne Byers
378	Name suppressed
379	Name suppressed
380	Name suppressed
381	Name suppressed (Partially confidential)
382	Name suppressed (Partially confidential)
383	Name suppressed (Partially confidential)
384	Name suppressed
385	Name suppressed
386	Name suppressed (Partially confidential)
387	Name suppressed
388	Confidential
389	Name suppressed
390	Ms Sarah Willett
391	Name suppressed

No	Author
392	Guildford Public School
393	Ms Susan Dolby
394	Name suppressed
395	Name suppressed
396	Name suppressed
397	Ms Michelle McLellan (Partially confidential)
398	Name suppressed
399	Name suppressed
400	Name suppressed
401	Confidential
402	Confidential
403	James Meehan High School
404	Narellan Vale Public School
405	Home Education Association Inc
406	Confidential
407	Name suppressed
407a	Name suppressed
407b	Name suppressed (Partially confidential)
408	Name suppressed
409	Name suppressed
410	Northern Sydney District Council of Parents and Citizens Associations
411	Ms Georgina Maker (Partially confidential)
412	Disability, Abuse and Corruption in (NSW) Education (DACE)
413	Yellow Ladybugs (Partially confidential)
414	Name suppressed
415	Confidential
416	Mr Jim Bond
417	Confidential
418	Name suppressed
418a	Name suppressed
419	Name suppressed (Partially confidential)
420	Ms Eva Martinez
421	Mrs Vanessa Comiskey
422	Mr John Hatton AO (Partially confidential)

No	Author
422a	Confidential
423	Mr Tim Bailey (Partially confidential)
424	Mr Martin McNally (Partially confidential)
425	Name suppressed (Partially confidential)
426	Action for People with Disability Inc
427	Ms Danielle Lawless (Partially confidential)

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 27 March 2017 Jubilee Room, Parliament House, Sydney	Ms Robyn Bale	Relieving Executive Director, Learning and Wellbeing, NSW Department of Education
	Ms Jane Thorpe	Executive Director, Employee Performance and Conduct Directorate, NSW Department of Education
	Ms Melissa Clements	Director, Disability, Learning and Support, NSW Department of Education
	Mr David Roy	Parent
	Dr Melanie Heyworth	Parent
	Dr Laura Issa	Parent
	Ms Di Robertson	Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association
	Mr Graeme McLeod	Chairperson, Disability Programs Reference Group, NSW Primary Principals' Association
	Mr Chris Presland	President, NSW Secondary Principals' Council
	Ms Meredith Fawcett	Executive Member, NSW Secondary Principals' Council
	Mr Peter Skinner	President, Special Education Principals' and Leaders' Association NSW
	Mr Matthew Johnson	Vice President, Special Education Principals' and Leaders' Association NSW
	Mrs Anne Flint	Executive Member, Special Education Principals' and Leaders' Association NSW
	Ms Margaret McKay	Division Head, Student Services, Association of Independent Schools of NSW
Ms Lisa Ridings	Senior Assistant Division Head, Students Services, Association of Independent Schools of NSW	
Mr Ian Baker	Director, Education Policy and Programs, Catholic Education Commission NSW	

Date	Name	Position and Organisation
	Ms Geraldine Gray	State Coordinator, Special Learning Needs, Catholic Education Commission NSW
	Mr Tony Fitzgerald	CEO and Principal, Mater Dei Catholic School
	Ms Elizabeth Gadek	National Director, Aspect Education, Autism Spectrum Australia
	Ms Rowena Perritt	Deputy National Director, Aspect Education, Autism Spectrum Australia
Monday 3 April 2017 Jubilee Room, Parliament House, Sydney	Mr Maurie Mulheron	President, NSW Teachers Federation
	Mr Gary Zadkovich	Deputy President, NSW Teachers Federation
	Ms Claudia Vera	Organiser, NSW Teachers Federation
	Ms Tracy Gocher	Councillor, Special Education Committee Member and NESAS Special Education Advisory Committee Federation Representative, NSW Teachers Federation
	Ms Pam Smith	Assistant Secretary and Women & Equity Committee Convenor, NSW Independent Education Union
	Ms Barbara Leiton	Member, NSW Independent Education Union
	Dr Mark Carter	Associate Professor, Department of Educational Studies, Macquarie University
	Dr Coral Kemp	Honorary Fellow, Department of Educational Studies, Macquarie University
	Dr Sally Howell	Principal of the MUSEC School, Department of Educational Studies, Macquarie University
	Ms Carol Barnes	Academic and advocate
	Dr Sue O'Neill	Lecturer in Special Education, School of Education, University of New South Wales
	Dr Therese Cumming	Associate Professor in Special Education, School of Education, University of New South Wales

Dr Iva Strnadová	Associate Professor in Special Education, School of Education, University of New South Wales
Mr Joel Matthews	Vice President, Federation of Parents and Citizens Associations of New South Wales
Dr Rachael Sowden	Delegate from New England, Federation of Parents and Citizens Associations of New South Wales
Ms Kate Finch	Manager, Systemic Advocacy, People with Disability Australia
Ms Meredith Lea	Policy Officer, Violence Prevention, People with Disability Australia
Ms Paulina Gutierrez	Individual Advocate (NSW), People with Disability Australia
Ms Jessica Cadwallader (<i>via teleconference</i>)	Project Manager: Violence Prevention, People with Disability Australia
Ms Aby Hutchinson-West	Manager Multidisciplinary Services, Northcott
Ms Ruth Callaghan	General Manager Stakeholder Relations, Northcott
Ms Stephanie Gotlib	Chief Executive Officer, Children and Young People with Disability Australia
Ms Julie Phillips	Member, Children and Young People with Disability Australia
Ms Alex Baltins	Member, Children and Young People with Disability Australia
Ms Suzanne Becker	Chief Executive Officer, Lifestart
Ms Jennifer Kemp	General Manager, Client Services, Lifestart
Ms Meg Clement-Couzner	Senior Systemic Advocate, Family Advocacy
Ms Yolande Cailly	Member, Family Advocacy
Ms Jessica Lobo	Senior Sector Development Officer, National Disability Services
Mr Henry Newton	Sector Development Officer, National Disability Services
Ms Elleker Cohen	Sector Development Officer, National Disability Services

Monday 8 May 2017**Morrow Room I, Novotel****Newcastle Beach, Newcastle**

Ms Jan Pennisi	Teacher
Mr Jack Galvin Waight	Teacher
Ms Suzanne Robertson	Parent
Ms Michelle McLellan	Parent
Ms Vivienne Fox	President, Home Education Association
Dr Karleen Gribble	Disability Spokesperson, Home Education Association
Witness A (<i>In-camera</i>)	
Ms Gaenor Dixon	President, Speech Pathology Australia
Ms Christine Lyons	Senior Advisor Professional Practice, Speech Pathology Australia
Mr Matthew Johnson	Principal, Glenvale School
Mr Stephen Harris	Director, Public Schools NSW, Lake Macquarie East Network, NSW Department of Education
Mr Peter Smith	Director, Public Schools NSW, Callaghan and Port Stephens Network, NSW Department of Education

Friday 19 May 2017**Tasman Room, The****Shellharbour Club, Shellharbour**

Ms Robyn Christofides	Teacher
Mr John Kotlash	Teacher
Ms Caroline Thornton	Parent
Mrs Vanessa Comiskey	Parent
Ms Anita Volkert	National Manager: Professional Standards and Representation, Occupational Therapy Australia
Ms Kim Bulkeley	Industry Advisor: Education and Disability, Occupational Therapy Australia
Witness B (<i>In-camera</i>)	
Witness C (<i>In-camera</i>)	
Witness D (<i>In-camera</i>)	
Witness E (<i>In-camera</i>)	
Ms Edwina Turner	Principal, The Crescent School.
Ms Sarah Rudling	Principal, Barrack Heights Public School
Ms Katrina Eyland	Principal, Principal, Havenlee School

Ms Sheryl Bruffey	Principal, Budawang School
Ms Mandy Shaw	Director, Public Schools NSW, Wollongong Network, NSW Department of Education
Ms Carolynne Merchant	Director, Public Schools NSW, Southern Tablelands Network, NSW Department of Education

Thursday 8 June 2017**Fountain Room, Lismore City
Hall, Lismore**

Ms Megan McQueen	Assistant Principal and Teacher
Mr Brett Holland	Teacher
Mrs Julie Hermansen	Parent
Ms Lee Duncan	Parent
Dr Sally Robinson	Senior Research Fellow, Centre for Children and Young People, Southern Cross University
Dr Lyn Gardon	Relieving Director School Services, NSW Department of Education

Friday 23 June 2017**Macquarie Room, Parliament
House, Sydney**

Mr Bart Cavalletto	Director, Services, Royal Institute for Deaf and Blind Children
Ms Jacqui Cashmore	Coordinator, Continuing Professional Education, Royal Institute for Deaf and Blind Children
Ms Sandi Ambler	Principal, Royal Institute for Deaf and Blind Children Garfield Barwick School
Dr Donald Gillies	Member of the Board—Advocacy, Specific Learning Difficulties Association of NSW
Mrs Rhonda Filmer	Vice-Chair, Specific Learning Difficulties Association of NSW
Mr Andrew Johnson	Advocate for Children and Young People, Office of the Advocate for Children and Young People
Ms Kelly Tallon	Senior Policy Advisor, Office of the Advocate for Children and Young People
Mr Paul Hewitt	Executive Director, Learning Standards, NSW Education Standards Authority
Mr Paul Martin	Executive Director, Quality Teaching, NSW Education Standards Authority

	Mr Robert Deacon	Teacher
	Ms Allison Gentle	Teacher
	Ms Cheryl McBride	Principal, Smithfield Public School
	Ms Bitá Christos	Deputy Principal Support, Smithfield Public School
	Ms Margret Wilkins	Acting Head Teacher, Personalised Learning, Rooty Hill High School
	Ms Catherine Lucas	Teacher, Rooty Hill High School
	Ms Megan Evans	Teacher, Karonga School
	Ms Sabrina Wiley	Teacher, Karonga School
	Mr Mark Scott	Secretary, NSW Department of Education
	Mr Murat Dizdar	Deputy Secretary, School Operations and Performance, NSW Department of Education
	Ms Robyn Bale	Relieving Executive Director, Learning and Wellbeing, NSW Department of Education
	Ms Jane Thorpe	Executive Director, Employee Performance and Conduct, NSW Department of Education
	Mr Mark Grant	Executive Director, Leadership and High Performance, NSW Department of Education
	Ms Melissa Clements	Director, Disability, Learning and Support, NSW Department of Education
	Mr Tobias Cook	Former student
Friday 11 August 2017 Macquarie Room, Parliament House, Sydney	Mr Steve Kinmond	Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman
	Ms Kathryn McKenzie	Director Disability, NSW Ombudsman

Appendix 3 Minutes¹⁰¹⁰

Minutes no. 32

Wednesday 24 August 2016

General Purpose Standing Committee No. 3

Members' Lounge, Parliament House, Sydney, 1.02 pm

1. Members present

Mrs Maclaren-Jones, *Deputy Chair*

Mr Franklin

Mrs Houssos

Mrs Mitchell

Revd Nile

Mr Secord

Mr Shoebridge (substituting for Ms Barham for the duration of the inquiry into students with disability or special needs in New South Wales schools)

2. Previous minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 31 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 22 August 2016 – Email from Mr Shoebridge to secretariat, advising that Mr Shoebridge will be substituting for Ms Barham for the duration of the inquiry into students with disability or special needs in New South Wales schools
- 23 August 2016 – Email from Mr Shoebridge to secretariat, forwarding correspondence from Children and Young People with Disability Australia proposing a broader terms of reference for the proposed self-reference inquiry into the students with disability or special needs in New South Wales schools.

4. Consideration of terms of reference

The committee noted the letter tabled at its meeting on 17 August 2016 proposing the following self-reference:

Inquiry into the provision of education to students with a disability or special needs in government and non-government schools in New South Wales

That General Purpose Standing Committee No. 3 inquire into and report on the provision of education to students with a disability or special needs in government and non-government schools in New South Wales, and in particular:

- (a) equitable access to resources for students with a disability or special needs in regional and metropolitan areas
- (b) the impact of the Government's 'Every Student Every School' policy on the provision of education to students with a disability or special needs in New South Wales public schools
- (c) developments since the 2010 Upper House inquiry into the provision of education to students with a disability or special needs and the implementation of its recommendations
- (d) complaint and review mechanisms within the school systems in New South Wales for parents and carers, and

¹⁰¹⁰ Appendix 3 only includes minutes relevant to the inquiry.

(e) any other related matters.

Resolved, on the motion of Mr Shoebridge: That the committee adopt the terms of reference.

5. Inquiry into enrolment capacity in inner city public primary schools

5.1 Inquiry timetable

Resolved, on the motion of Mr Shoebridge: That the Deputy Chair circulate to members further proposed hearing/site visit and report deliberative dates, and that members agree to the dates via email, unless a meeting is required to resolve any disagreement.

6. Conduct of the inquiry into education of students with a disability or special needs in New South Wales

6.1 Proposed timeline

Resolved, on the motion of Revd Nile: That the committee:

- request a briefing by the Ombudsman's Office, to be scheduled during a lunch adjournment in the September sittings
- defer advertising the inquiry, sending stakeholder letters and determining a timetable for the inquiry until after the briefing by the Ombudsman's Office.

7. Adjournment

The committee adjourned at 1.13 pm, until Monday 29 August 2016 at 8.45 am in the Jubilee Room (Budget Estimates hearing).

Sharon Ohnesorge

Clerk to the Committee

Minutes no. 38

Thursday 15 September 2016

General Purpose Standing Committee No. 3

Waratah Room, Parliament House, Sydney, 1.04 pm

1. Members present

Mrs Maclaren-Jones, *Deputy Chair*

Mrs Houssos

Mrs Mitchell (until 1.22 pm)

Mr Shoebridge (from 1.06 pm)

2. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes nos. 33, 34, 35, 36 and 37 from Budget Estimates be confirmed.

3. Inquiry into education of students with a disability or special needs in New South Wales

3.1 Briefing by NSW Ombudsman's Office

The committee was briefed on the work of the Ombudsman's Office relating to the issues being considered in the inquiry from the following officials:

- Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner
- Ms Kathryn McKenzie, Director, Disability
- Ms Meredith Brown, Principal Investigator.

3.2 Conduct of the inquiry

Resolved, on the motion of Mr Shoebridge: That:

- the closing date for submissions be Sunday 29 January 2017

- the committee hold four public hearings in late February/March 2017 (with a reserve hearing date in June 2017) in Sydney, Newcastle, and potentially in the Illawarra and other regional locations, with exact dates to be determined once the 2017 sitting calendar is finalised
- the committee report by Thursday 10 August 2017.

3.3 Stakeholder list

Resolved, on the motion of Mrs Houssos: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

3.4 Advertising

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

4. Inquiry into enrolment capacity in inner city public primary schools

4.1 Site visit on 11 November 2016

Resolved, on the motion of Mr Shoebridge: That the committee adopt the following itinerary for a half-day site visit on the morning of Friday 11 November 2016, commencing at 9.00 am:

- tour of Ultimo Public School
- viewing of the site of the temporary school on Wentworth Park
- viewing of any models of the temporary school and the planned new permanent school
- tour of the Fig and Wattle Street site, if possible
- tour of Anzac Park Public School, a new school in Cammeray.

4.2 Report deliberative

The committee noted that the report deliberative is confirmed for Monday 6 February 2017.

5. Adjournment

The committee adjourned at 2.04 pm, until Friday 11 November 2016 at 9.00 am (site visit for the inquiry into enrolment capacity in inner city public primary schools).

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 43

Thursday 9 March 2017

General Purpose Standing Committee No. 3

Members' Lounge, Parliament House, Sydney, 1.05 pm

1. Members present

Mr Gallacher, *Chair*
Mrs Maclaren-Jones, *Deputy Chair*
Mr Graham
Mr Mookhey (from 1.07 pm)
Revd Nile
Mr Shoebridge

2. Apologies

Mrs Mitchell

3. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no 42 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 13 October 2016 – Email from Dr Ronelle Hutchinson, Manager, Policy and Advocacy, Speech Pathology Australia to secretariat, requesting to appear as a witness at a public hearing
- 19 October 2016 – Letter from Mr John Dixon, General Secretary, NSW Teachers Federation to Mrs Maclaren-Jones, Deputy Chair requesting an extension to the submission closing date
- 2 December 2016 – Email from Ms Claudia Vera, NSW Teachers Federation to secretariat, advising that the federation will continue to utilise its online submissions portal
- 27 February 2017 – Email from Mr Lee Duncan to secretariat, requesting to appear as a witness at the first public hearing.

Sent:

- 24 November 2016 – Email from secretariat to Ms Claudia Vera, NSW Teachers Federation, regarding the NSW Teachers Federation's online portal function for submissions to the inquiry.

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3-6, 8, 10, 14, 17, 23, 25, 30-31, 36, 38-39, 41, 44, 47, 49-50, 53, 58-59, 63, 65-66, 69, 71, 77, 79, 81-82, 84, 86, 88, 90, 92-96, 98, 101, 105-107, 109, 111-112, 115, 117-119, 121, 125, 126, 129, 131-133, 135-136, 139, 141, 143, 151-161 and 163-168.

5.2 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 2, 7, 13, 15, 21, 26-29, 32-35, 37, 40, 42-43, 45, 48, 51, 54, 56, 60, 62, 64, 67, 70, 72-74, 76, 80, 83, 85, 87, 91, 97, 99-100, 102, 104, 110, 113-114, 120, 122-124, 127, 138, 140, 142, 145-146, 162 and 170, with the exception of the author's name, which is to remain confidential, as per the request of the author.

Partially confidential submissions – at the author's request

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 16, 20, 22, 24, 52, 57, 61, 75, 78, 103, 108, 116, 128, 137 and 150, with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Partially confidential submissions – as identified by the secretariat

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 18, with the exception of identifying and/or sensitive information regarding third parties, which is to remain confidential, as per the request of the author or the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 19, with the exception of identifying information regarding the authors and third parties, which is to remain confidential, as per the request of the author or the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 147, with the exception of identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 149, with the exception of:

- the fourth submission author's name, which is to remain confidential, as per the request of the author

- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 169, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

5.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 9, 11, 11a, 12, 46, 68, 89, 130, 134, 144 and 148 confidential, as per the request of the author.

5.4 Public hearings

Resolved, on the motion of Revd Nile: That the committee's four scheduled public hearings be held at the following locations:

- 27 March and 3 April 2017 – Parliament House, Sydney
- 8 May 2017 – Newcastle
- 19 May 2017 – the Illawarra.

Resolved, on the motion of Revd Nile: That the committee hold two further hearings in June, in Tamworth and at Parliament House, Sydney, with dates to be determined by the Chair after consultation with members regarding their availability.

5.5 Correspondence to the NSW Department of Education

Resolved, on the motion of Mr Shoebridge: That the committee authorise a letter to be sent Mr Mark Scott, Secretary, NSW Department of Education, requesting that no detrimental action be taken against employees of the Department for any disclosure made in a submission or oral evidence to the inquiry.

6. Adjournment

The committee adjourned at 1.15 pm, until Monday 27 March 2017 (public hearing for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 44

Monday 27 March 2017

Portfolio Committee No. 3 – Education

Jubilee Room, Parliament House, Sydney, 9.05 am

1. Members present

Mr Gallacher, *Chair*

Mrs Maclaren-Jones, *Deputy Chair* (until 4.05 pm)

Mr Gay (from 10.55 am)

Mr Graham

Mr Mookhey (from 9.32 am)

Revd Nile (from 9.28 am)

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no 43 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 20 March 2017 – Email from Ms Gayle Kissonergis, Policy Officer, Occupational Therapy Australia to secretariat, requesting to appear as a witness at one of the committee’s upcoming hearings
- 20 March 2017 – Email from Ms Kelly Tallon, Senior Policy Advisor, Office of the Advocate for Children and Young People to secretariat, advising that the Advocate for Children and Young People, Mr Andrew Johnson, is unavailable to appear as a witness on 3 April 2017 due to pre-existing commitments and requesting that he instead be invited to appear on 23 June 2017
- 21 March 2017 – Email from Mr John Dixon, General Secretary, NSW Teachers Federation to secretariat, requesting that the federation be given its own timeslot and be allowed to send four representatives to appear at the hearing on 3 April 2017
- 21 March 2017 – Email from Ms Cassandra Kavanagh to secretariat, regarding the publication of her submission
- 24 March 2017 – Email from Mr Mark Jones, Parliamentary Advisor, Office of Hon Don Harwin MLC, Leader of the Government in the Legislative Council to Clerk of the Parliaments, advising that Mr Gay is replacing Mrs Mitchell as a member of Portfolio Committee No. 3 – Education.

Sent:

- 9 March 2017 – Letter from Chair to Mr Mark Scott AO, Secretary, NSW Department of Education, advising that no detrimental action should be taken against inquiry participants employed by the department.

4. Inquiry into education of students with a disability or special needs in New South Wales

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 171, 173, 176-178, 180-181, 183, 185, 187, 189, 191, 193, 195, 198-200, 208, 212, 214, 216-217, 219, 221, 224-225, 230-231, 234, 240, 243, 249, 251-252 and 255.

4.2 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 172, 174, 179, 182, 184, 186, 188, 190, 192, 196, 201, 204, 207, 210, 215, 218, 220, 222-223, 226-227, 229, 232-233, 239, 242, 244-246, 257 and 260, with the exception of the author’s name, which is to remain confidential, as per the request of the author.

Partially confidential submissions – at the author’s request

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 194, 197, 205-206, 209, 236, 241, 248 and 258, with the exception of the author’s name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Partially confidential submissions – as identified by the secretariat

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 203, with the exception of identifying information regarding third parties, which is to remain confidential, as per the request of the author or the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 250, with the exception of identifying and/or sensitive information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 253, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission no. 259, with the exception of identifying and/or sensitive information and potential adverse mention regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 175, 202-202a, 211, 213, 228, 235, 237-238, 247, 254 and 256 confidential, as per the request of the author.

4.4 Appearance by parents panel

The committee discussed the appearance of parents on the panel at today's hearing.

4.5 Public hearing

Revd Nile and Mr Mookhey joined the meeting.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from the NSW Department of Education were sworn and examined:

- Ms Robyn Bale, Relieving Executive Director, Learning and Wellbeing
- Ms Jane Thorpe, Executive Director, Employee Performance and Conduct Directorate
- Ms Melissa Clements, Director, Disability, Learning and Support.

The evidence concluded and the witnesses withdrew.

Mr Gay joined the meeting.

The following witnesses were sworn and examined:

- Mr David Roy, Parent
- Ms Melanie Heyworth, Parent
- Dr Laura Issa, Parent.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Di Robertson, Vice President and Executive Liaison, SSP Reference Group, NSW Primary Principals' Association
- Mr Graeme McLeod, Chairperson, Disability Programs Reference Group, NSW Primary Principals' Association
- Mr Chris Presland, President, NSW Secondary Principals' Council
- Ms Meredith Fawcett, Executive Member, NSW Secondary Principals' Council
- Mr Peter Skinner, President, Special Education Principals and Leaders Association
- Mr Matthew Johnson, Vice President, Special Education Principals and Leaders Association
- Mrs Anne Flint, Executive Member, Special Education Principals and Leaders Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret McKay, Division Head, Student Services, Association of Independent Schools of NSW
- Ms Lisa Ridings, Senior Assistant Division Head, Students Services, Association of Independent Schools of NSW
- Mr Ian Baker, Director, Education Policy and Programs, Catholic Education Commission NSW

- Ms Geraldine Gray, State Coordinator, Special Learning Needs, Catholic Education Commission NSW
- Mr Tony Fitzgerald, CEO and Principal, Mater Dei Catholic School.

The evidence concluded and the witnesses withdrew.

Mrs Maclaren-Jones left the meeting.

The following witnesses from Autism Spectrum Australia were sworn and examined:

- Ms Elizabeth Gadek, National Director, Aspect Education
- Ms Rowena Perritt, Deputy National Director, Aspect Education.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 4.47 pm.

4.6 Redaction of sensitive information

Resolved, on the motion of Mr Shoebridge: That the committee redact:

- the name of Dr Laura Issa's son in the evidence given by Dr Issa
- identifying and/or sensitive information in the evidence given by Mr David Roy, subject to seeking Mr Roy's views on such redaction.

5. Adjournment

The committee adjourned at 4.50 pm, until Monday 3 April 2017 (public hearing for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge

Clerk to the Committee

Minutes no. 45

Monday 3 April 2017

Portfolio Committee No. 3 – Education

Jubilee Room, Parliament House, Sydney, 9.00 am

1. Members present

Mr Gallacher, *Chair*

Mr Gay

Mr Graham

Mr Mookhey

Revd Nile

Mr Shoebridge (until 2.50 pm)

2. Apologies

Mrs Maclaren-Jones, *Deputy Chair*

3. Draft minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 44 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 28 March 2017 – Email from Ms Kate Finch, Manager, Systemic Advocacy, People with Disability Australia Incorporated to secretariat, requesting for one witness to appear via teleconference at the hearing of 3 April 2017.

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from the NSW Teachers Federation were sworn and examined:

- Mr Maurie Mulheron, President
- Mr Gary Zadkovich, Deputy President
- Ms Claudia Vera, Organiser
- Ms Tracy Gocher, Councillor, Special Education Committee Member and NESA Special Education Advisory Committee Federation Representative.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Independent Education Union were sworn and examined:

- Ms Pam Smith, Assistant Secretary and Women & Equity Committee Convenor
- Mr James Jenkins-Flint, Organiser
- Ms Barbara Leiton, Member.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Mark Carter, Associate Professor, Department of Educational Studies, Macquarie University
- Dr Coral Kemp, Honorary Fellow, Department of Educational Studies, Macquarie University
- Dr Sally Howell, Principal of the MUSEC School, Department of Educational Studies, Macquarie University
- Ms Carol Barnes, Academic and advocate
- Dr Sue O'Neill, Lecturer in Special Education, School of Education, University of NSW
- Dr Therese Cumming, Associate Professor in Special Education, School of Education, University of NSW
- Dr Iva Strnadová, Associate Professor in Special Education, School of Education, University of NSW.

Ms Barnes tendered the following document:

- Document entitled 'SPELD NSW Position statement: Selecting a successful intervention program'.

Dr Cumming tendered the following document:

- Document entitled 'Evidence-based transition planning practices for secondary students with disabilities: What has Australia signed up for?'.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Federation of Parents and Citizens Associations of NSW were sworn and examined:

- Mr Joel Matthews, Vice President
- Ms Rachael Sowden, Delegate from New England.

The evidence concluded and the witnesses withdrew.

The following witnesses from People with Disability Australia were sworn and examined:

- Ms Kate Finch, Manager, Systemic Advocacy
- Ms Meredith Lea, Policy Officer, Violence Prevention
- Ms Paulina Gutierrez, Individual Advocate (NSW)
- Ms Jessica Cadwallader, Project Manager: Violence Prevention (by teleconference).

The evidence concluded and the witnesses withdrew.

The following witnesses from Northcott were sworn and examined:

- Ms Aby Hutchinson-West, Manager Multidisciplinary Services
- Ms Ruth Callaghan, General Manager Stakeholder Relations.

The evidence concluded and the witnesses withdrew.

The following witnesses from Children and Young People with Disability Australia were sworn and examined:

- Ms Stephanie Gotlib, Chief Executive Officer
- Ms Julie Phillips, Member
- Ms Alex Baltins, Member.

The evidence concluded and the witnesses withdrew.

Mr Shoebridge left the meeting at 2.50 pm.

The following witnesses from Lifesart were sworn and examined:

- Ms Suzanne Becker, Chief Executive Officer
- Ms Jennifer Kemp, General Manager, Client Services.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Family Advocacy were sworn and examined:

- Ms Meg Clement-Couzner, Senior Systemic Advocate
- Ms Yolande Cailly, Member.

Ms Clement-Couzner tendered the following document:

- Document entitled 'All students learning together: Taking action on education?.'

The evidence concluded and the witnesses withdrew.

The following witnesses from the National Disability Service were sworn and examined:

- Ms Jessica Lobo, Senior Sector Development Officer
- Mr Henry Newton, Sector Development Officer
- Ms Elleker Cohen, Sector Development Officer.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 4.32 pm.

5.2 Additional supplementary questions

Resolved, on the motion of Mr Mookhey: That additional supplementary questions regarding the Arrowsmith Program be forwarded to the Catholic Education Commission NSW, the Association of Independent Schools of NSW and the NSW Department of Education.

5.3 Redaction of sensitive information

Resolved, on the motion of Mr Gay: That the committee redact the name of a school identified in the evidence given by Dr Laura Issa on 27 March 2017.

Resolved, on the motion of Revd Nile: That the committee redact the names of Ms Rachael Sowden's son in the evidence given by Ms Sowden on 3 April 2017.

5.4 Partially confidential submission – as identified by the secretariat

Resolved, on the motion of Revd Nile: That the committee redact from submission no. 126 the name of a school identified in the submission, as per the recommendation of the secretariat.

5.5 Tended documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing:

- ‘SPELD NSW Position statement: Selecting a successful intervention program’, tendered by Ms Barnes
- ‘Evidence-based transition planning practices for secondary students with disabilities: What has Australia signed up for?’, tendered by Dr Cumming
- ‘All students learning together: Taking action on education’, tendered by Ms Clement-Couzner.

6. Adjournment

The committee adjourned at 4.39 pm, until Monday 8 May 2017 (public hearing in Newcastle for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge

Clerk to the Committee

Minutes no. 47

Monday 8 May 2017

Portfolio Committee No. 3 – Education

Morrow Room I, Novotel Newcastle Beach, Newcastle, 9.45 am

1. Members present

Mrs Maclaren-Jones, *Deputy Chair*

Mr Gay

Mr Mookhey (from 10.05 am)

Mr Shoebridge

2. Apologies

Mr Amato, *Chair*

Mr Graham

Revd Nile

3. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 45 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 7 April 2017 – Email from Mr David Brady, Chief Executive Officer, Hear For You Limited, to secretariat, requesting to appear as a witness at the public hearing to be held in Sydney on Friday 23 June 2017
- 11 April 2017 – Email from author of submission no 257 to secretariat, requesting consideration for parent to appear as a witness
- 12 April 2017 – Email from Ms Claudia Vera, City Organiser, NSW Teachers Federation, to secretariat, requesting extension of time to provide answers to questions on notice

- 18 April 2017 – Email from Dr Ronelle Hutchinson, Manager Policy & Advocacy, Speech Pathology Australia to secretariat, requesting to appear as a witness
- 27 April 2017 – Email from the author of submission no. 85, declining the invitation to appear as a witness at the Newcastle hearing.
- 28 April 2017 – Email from Ms Suzanne Robertson to secretariat, requesting to appear as a witness at the Newcastle hearing
- 1 May 2017 – Email from the author of submission no. 197, declining the invitation to appear as a witness at the Newcastle hearing

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 264-266, 268, 277-278, 282-283, 291, 297-299, 303, 305, 314-315, 317, 320, 326, 328, 332, 337, 339, 344-345, 347-348, 353-354, 360-362, 371, 377, 390, 392-393, 404 and 405.

5.2 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 261, 267, 269 271-274, 276, 279-281, 284-285, 287-290, 292, 300-302, 307-308, 313, 316, 318-319, 321, 323-325, 329, 334, 341-342, 349-350, 355-357, 363-364, 366, 370, 370a, 372, 374, 376, 378-380, 384-385, 387, 389, 391, 394, 398-400, 407, 407a and 408-409 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (at the author's request)

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 293, 327, 331, 351, 381 and 397 with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 322, with the exception of identifying and/or sensitive information and/or potential adverse mention regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

5.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 262-263, 270, 275, 286, 294-296, 304, 306, 309-312, 333, 336, 340, 358-359, 365, 367, 401-402, and 406 confidential, as per the request of the author.

Resolved, on the motion of Mr Shoebridge: That the committee keep submission no. 250a confidential, as per the recommendation of the secretariat.

5.4 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Mark Scott, Secretary, NSW Department of Education, received on 27 April 2017
- Mr David Roy, parent, received on 2 April 2017
- Mr Chris Presland, President, NSW Secondary Principals' Council, received on 20 April 2017
- Ms Robyn Yates, Chief Policy and Compliance Officer, Association of Independent Schools of NSW, received on 21 April 2017

- Mr Ian Baker, Director – Education and Policy Programs, Catholic Education Commission NSW
- Ms Elizabeth Gadek, Director, Autism Spectrum Australia, received on 13 April 2017.

Resolved, on the motion of Mr Shoebridge: That the committee keep the answer to a question on notice provided by Mr David Roy confidential, as per the request of the author.

5.5 Request to appear *in camera*

Resolved, on the motion of Mr Shoebridge: That the evidence of submission author no. 15 on 8 May 2017 be heard *in camera*.

5.6 Additional witnesses for public hearing on 19 May 2017

Resolved, on the motion of Mr Shoebridge: That Havenlee School and Budawang School be invited to give evidence at the public hearing in the Illawarra on Friday 19 May 2017.

5.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Jan Pennisi, Teacher
- Mr Jack Galvin Waight, Teacher.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Suzanne Robertson, Parent
- Ms Michelle McLellan, Parent.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Home Education Association were sworn and examined:

- Ms Vivienne Fox, President
- Dr Karleen Gribble, Disability Spokesperson.

Ms Fox tendered the following document:

- Case studies from members of the Home Education Association.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

5.8 *In camera* hearing

The committee previously resolved to take *in camera* evidence from the author of submission no. 15.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Sharon Ohnesorge, Ms Rhia Victorino, Ms Allison Stowe, Ms Angeline Chung and Hansard reporters.

The following witness was sworn and examined:

- Witness A.

The evidence concluded and the witness withdrew.

5.9 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were readmitted.

The following witnesses from Speech Pathology Australia were sworn and examined:

- Ms Gaenor Dixon, President
- Ms Christine Lyons, Senior Advisor Professional Practice.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Matthew Johnson, Principal, Glensvale School.

The evidence concluded and the witness withdrew.

The following witnesses from the NSW Department of Education were sworn and examined:

- Mr Stephen Harris Director, Public Schools NSW, Lake Macquarie East Network
- Mr Peter Smith Director, Public Schools NSW, Callaghan and Port Stephens Network.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 3.00 pm.

5.10 Tended documents

Resolved, on the motion of Mr Shoebridge: That the committee accept the following documents tendered during the public hearing:

- Case studies from members of the Home Education Association, tendered by Ms Vivienne Fox.

5.11 Redaction of sensitive information

Resolved, on the motion of Mr Shoebridge: That the committee redact the names of Ms Robertson and Ms McLellan's children and the individual schools they identified, in the evidence given by them on 8 May 2017.

6. Adjournment

The committee adjourned at 3.03 pm, until Friday 19 May 2017 (public hearing in Shellharbour for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 48

Friday 19 May 2017

Portfolio Committee No. 3 – Education

Tasman Room, The Shellharbour Club, Shellharbour at 10.05 am

1. Members present

Mr Amato, *Chair*

Mr Graham

Mrs Maclaren-Jones, *Deputy Chair*

Mr Shoebridge

2. Apologies

Mr Gay

Mr Mookhey

Revd Nile

3. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes nos. 46 and 47 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 4 May 2017 – Email from Mr Tim Hails to secretariat, regarding his son with dyslexia and the need for assistive technologies in school
- 7 May 2017 – Email from author of submission no. 134 to secretariat, requesting to appear *in camera* at the hearing on 19 May 2017 in Shellharbour
- 8 May 2017 – Email from author of submission no. 254 to secretariat, requesting to appear as a witness at the hearing on 19 May 2017 in Shellharbour
- 9 May 2017 – Email from author of submission no. 24 to secretariat, requesting to appear *in camera* at the hearing on 19 May 2017 in Shellharbour
- 11 May 2017 – Email from Ms Cassandra Kavanagh to secretariat, requesting to appear as a witness at the hearing on 19 May 2017 in Shellharbour
- 13 May 2017 – Email from author of submission no. 250 to secretariat, requesting to appear as an *in camera* witness at the hearing on 19 May 2017 in Shellharbour
- 15 May 2017 – Email from Mr Craig Redfern, Principal, Unanderra Public School declining the invitation to appear as a witness at the Shellharbour hearing.

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 126a, 373, 403, 410, and 412.

5.2 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission nos. 330, 338, 343, 352, 375, 382, 387, and 395-396 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (at the author's request)

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission nos. 383, 386 and 413 with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 144a, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 172a, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee keep identifying information regarding third parties in submission no. 201 confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee keep identifying information regarding third parties in submission no. 346 confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 368, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 411, with the exception of identifying information regarding third parties, which is to remain confidential, as per the request of the author and the recommendation of the secretariat.

5.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 369 and 388 confidential, as per the request of the author.

5.4 Attachments to submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of attachments to submission nos. 135 and 410.

5.5 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Maurie Mulheron, President, NSW Teachers Federation, received on 8 May 2017
- Ms Pam Smith, Assistant Secretary and Women & Equity Committee Convenor, NSW Independent Education Union, received on 1 May 2017
- Ms Aby Hutchinson-West, Manager Multidisciplinary Services, Northcott, received on 1 May 2017
- Ms Suzanne Becker, Chief Executive Officer, Lifestart, received on 1 May 2017
- Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People with Disability Australia, received on 1 May 2017
- Ms Meg Clement-Couzner, Senior Systemic Advocate, Family Advocacy, received on 1 May 2017.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the answer to a question on notice provided by Lifestart, with the exception of identifying or sensitive information, which is to remain confidential, as per the request of the author.

5.6 Attachments to answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of attachments to the answers to questions on notice provided by the NSW Secondary Principals Council and Family Advocacy.

5.7 Next regional hearing – 8 June 2017

Resolved, on the motion of Mrs Maclaren-Jones: That the committee hold its fifth public hearing on 8 June 2017 in Lismore, with the witnesses on the Chair's proposed witness list invited to attend, with the potential of holding a site visit at a local school, subject to identifying an appropriate location.

5.8 Inquiry timeline

Resolved, on the motion of Mr Shoebridge: That the committee:

- hold the report deliberative on Friday 15 September 2017
- table the report on Thursday 21 September 2017.

5.9 Requests to appear *in camera*

Resolved, on the motion of Mr Graham: That the evidence of submission authors nos. 24, 134, 250 and 254 on 19 May 2017 be heard *in camera*.

5.10 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Robyn Christofides, Teacher
- Mr John Kotlash, Teacher.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Caroline Thornton, Parent
- Ms Vanessa Comiskey, Parent.

Ms Comiskey tendered the following document:

- Letter from Ms Comiskey to members of the committee, attaching documentation regarding her child.

The evidence concluded and the witnesses withdrew.

The following witnesses from Occupational Therapy Australia were sworn and examined:

- Ms Anita Volkert, National Manager: Professional Standards and Representation
- Ms Kim Bulkeley, Industry Advisor: Education and Disability.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

5.11 *In camera* hearing

The committee previously resolved to take *in camera* evidence from the authors of submission nos. 24, 134, 250 and 254.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Sharon Ohnesorge, Ms Rhia Victorino, Ms Allison Stowe, Ms Angeline Chung and Hansard reporters.

The following witnesses were sworn and examined:

- Witness B
- Witness C
- Witness D
- Witness E.

Witness D tendered the following document:

- Document entitled 'Suggested solutions'.

The evidence concluded and the witnesses withdrew.

5.12 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were readmitted.

The following witnesses were sworn and examined:

- Ms Edwina Turner, Principal, The Crescent School.
- Ms Sarah Rudling, Principal, Barrack Heights Public School
- Ms Katrina Eyland, Principal, Principal, Havenlee School
- Ms Sheryl Bruffey, Principal, Budawang School.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Department of Education were sworn and examined:

- Ms Mandy Shaw, Director, Public Schools NSW, Wollongong Network
- Ms Carolynne Merchant, Director, Public Schools NSW, Southern Tablelands Network.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 3.43 pm.

5.13 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and keep confidential the following document tendered during the public hearing:

- Letter from Ms Comiskey to members of the committee, attaching documentation regarding her child, tendered by Ms Comiskey.

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following document tendered during the public hearing:

- Document entitled 'Suggested solutions', tendered by Witness D.

Resolved, on the motion of Mr Shoebridge: That the committee publish the following document tendered and accepted during the public hearing on 8 May 2017:

- Case studies from members of the Home Education Association, tendered by Ms Vivienne Fox.

6. Adjournment

The committee adjourned at 3.45 pm, until Thursday 8 June 2017 (public hearing in Lismore for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 49

Thursday 8 June 2017

Portfolio Committee No. 3 – Education

Wilson Park School, Lismore at 10.00 am

1. Members presentMr Amato, *Chair*

Mr Gay

Mr Graham

Mrs Maclaren-Jones, *Deputy Chair* (until 2.15 pm)

Mr Shoebridge

2. Apologies

Mr Mookhey

Revd Nile

3. Draft minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 48 be confirmed.

4. Inquiry into education of students with a disability or special needs in New South Wales**4.1 Public submissions**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no 119a.

4.2 Partially confidential submissions***Name suppressed submissions***

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 414 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 407b, with the exception of:

- the submission author's name, which is to remain confidential, as per the request of the author
- identifying information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Mr Graham: That the committee keep submission no. 415 confidential, as per the recommendation of the secretariat.

4.4 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the answers to questions on notice and supplementary questions provided by Ms Carol Barnes, received on 15 May 2017.

4.5 Next regional hearing – 23 June 2017

Resolved, on the motion of Mr Graham: That the NSW Department of Education be scheduled to appear for 2 hours, and that other senior departmental officers from the Department be invited to appear, in addition to Mr Mark Scott, Secretary, and Ms Melissa Clements, Director, Disability, Learning and Support.

Resolved, on the motion of Mr Graham: That the witnesses on the Chair's proposed witness list, as amended, be invited to give evidence at the public hearing on Friday 23 June 2017.

4.6 Site visit to Wilson Park School

The committee visited Wilson Park School, Lismore, and met with the following representatives:

- Ms Helen Rea, Principal
- Ms, Lisa McInerney, Assistant Principal
- Ms Megan McQueen, Assistant Principal
- Ms Emma Rolfe, School Psychologist
- Ms Susie Carlson, Classroom Teacher
- Ms Gail Allen, Classroom Teacher
- Mr Marcus Jones, Classroom Teacher
- Ms Catherine Hall, Secretary P&C Association.

4.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Megan McQueen, Assistant Principal and Teacher
- Mr Brett Holland, Teacher

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Julie Hermansen, Parent
- Ms Lee Duncan, Parent

Mrs Hermansen tendered the following document:

- Collection of 'Make it a Red Letter Day for Dyslexia' letters

The evidence concluded and the witnesses withdrew.

The following witness from Southern Cross University was sworn and examined:

- Dr Sally Robinson, Senior Research Fellow, Centre for Children and Young People

Dr Robinson tendered the following documents:

- Australian Institute of Health and Welfare fact sheet entitled 'Disability in Australia: changes over time in inclusion and participation in education'.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled 'Safe at school?: Exploring safety and harm of students with cognitive disability in and around school'.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled 'Safe at school?' – Figure 4: Harms reported by children and young people, families and stakeholders and Figure 5: Summary of participants' perspectives.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled 'Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?'
- Extract of the Centre for Children and Young People, Southern Cross University issues paper entitled 'Belonging and Connection of School Students with Disability'.

The evidence concluded and the witness withdrew.

The following witness from the NSW Department of Education was sworn and examined:

- Dr Lyn Gardon, Relieving Director School Services.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The public hearing concluded at 2.30 pm.

4.8 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Collection of ‘Make it a Red Letter Day for Dyslexia’ letters, tendered by Mrs Julie Hermansen.
- Australian Institute of Health and Welfare fact sheet entitled ‘Disability in Australia: changes over time in inclusion and participation in education’, tendered by Dr Sally Robinson.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled ‘Safe at school?: Exploring safety and harm of students with cognitive disability in and around school’, tendered by Dr Sally Robinson.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled ‘Safe at school?’ – Figure 4: Harms reported by children and young people, families and stakeholders and Figure 5: Summary of participants’ perspectives, tendered by Dr Sally Robinson.
- Extract of the Centre for Children and Young People, Southern Cross University report entitled ‘Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?’, tendered by Dr Sally Robinson.
- Extract of the Centre for Children and Young People, Southern Cross University issues paper entitled ‘Belonging and Connection of School Students with Disability’, tendered by Dr Sally Robinson.

5. Adjournment

The committee adjourned at 2.32 pm, until Friday 23 June 2017 (public hearing in Sydney for inquiry into students with disability or special needs in New South Wales schools).

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 50

Friday 23 June 2017

Portfolio Committee No. 3 – Education

Macquarie Room, Parliament House, Sydney, 8.55 am

1. Members present

Mr Amato, *Chair*

Mr Graham

Mrs Maclaren-Jones, *Deputy Chair* (from 11.08 am until 2.58 pm)

Mr Martin

Mr Mookhey (from 9.05 am)

Revd Nile

Mr Shoebridge (from 8.58 am)

2. Draft minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 49 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 June 2017 – Email from Mr Steve Kinmond to secretariat, requesting to appear at the hearing on 23 June 2017 in Sydney pursuant to a summons.

- 19 June 2017 – Email from Ms Robyn Armstrong to secretariat, declining the invitation to appear as a witness at the hearing of Friday 23 June 2017.
- 21 June 2017 – Email from Mr David Roy to Committee Chair, requesting an order for the production of State papers under standing order 52.

4. Inquiry into education of students with a disability or special needs in New South Wales

4.1 Public submissions

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission nos. 416, 420, and 421.

4.2 Partially confidential submissions

Name suppressed submission

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 418 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submission to be considered for partial confidentiality (at the author's request)

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 419 with the exception of the author's name and/or other identifying or sensitive information, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 422, with the exception of identifying and sensitive information, which is to remain confidential, as per the request of the author and the recommendation of the secretariat.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 423 with the exception of identifying and sensitive information, which is to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Mr Graham: That the committee keep submission no. 417 confidential, as per the request of the author.

4.4 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Graham: That the committee authorise the publication of the answers to questions on notice and supplementary questions provided by:

- Ms Jan Pennisi, teacher, received on 5 June 2017
- Mr Jack Galvin Waight, teacher, received on 14 June 2017
- Speech Pathology Australia, received on 13 June 2017
- Mr Stephen Harris and Mr Peter Smith, Department of Education, received on 14 June 2017
- Mrs Julie Hermansen, parent, received on 15 June 2017.

4.5 Appearance of the NSW Ombudsman

Resolved, on the motion of Mr Graham: That the NSW Ombudsman be invited to appear before the committee on Friday 11 August 2017.

4.6 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Bart Cavalletto, Director, Services, Royal Institute for Deaf and Blind Children
- Ms Jacqui Cashmore, Coordinator, Continuing Professional Education, Royal Institute for Deaf and Blind Children
- Ms Sandi Ambler, Principal, Royal Institute for Deaf and Blind Children Garfield Barwick School
- Dr Donald Gillies, Member of the Board—Advocacy, Specific Learning Difficulties Association of NSW
- Mrs Rhonda Filmer, Vice-Chair, Specific Learning Difficulties Association of NSW.

Mr Cavalletto tendered the following documents:

- Document of South Pacific Educators in Vision Impairment entitled “Professional Standards Elaborations for Specialist Teachers (Vision Impairment): Career Stages”.
- Document of South Pacific Educators in Vision Impairment entitled “SPEVI Principles and Practice: Guidelines for quality education of learners with vision impairment”.
- Document of National Association of Australian Teachers of the Deaf entitled “Teacher of the Deaf Elaborations of the Australia Professional Standards for Teachers”, dated June 2016.

The evidence concluded and the witnesses withdrew.

The following witnesses from the Office of the Advocate for Children and Young People were sworn and examined:

- Mr Andrew Johnson, Advocate for Children and Young People
- Ms Kelly Tallon, Senior Policy Advisor.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The committee deliberated.

4.7 Statement by Chair

Resolved, on the motion of Mr Graham: That the committee Chair make the following statement during the public hearing, and that the statement be issued as a media release:

‘Since public comments by Pauline Hanson relating to students with autism, committee members have been contacted by parents distressed at the impact of these comments.

The committee supports the inclusion of students with disabilities, including autism, in New South Wales schools as being of benefit to all students and rejects any suggestion that children with disabilities be segregated.

The committee is currently considering these issues in detail and will issue a full report in due course.’

4.8 Public hearing

Witnesses, the public and the media were readmitted.

The Chair made a statement.

The following witnesses from the NSW Education Standards Authority were sworn and examined:

- Mr Paul Hewitt, Executive Director, Learning Standards
- Mr Paul Martin, Executive Director, Quality Teaching.

Mr Mookhey left the meeting.

Mrs Maclaren-Jones joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Robert Deacon, Teacher
- Ms Allison Gentle, Teacher.

Mr Mookhey joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Cheryl McBride, Principal, Smithfield Public School
- Ms Bita Christos, Deputy Principal Support, Smithfield Public School
- Ms Margret Wilkins, Acting Head Teacher, Personalised Learning, Rooty Hill High School
- Ms Catherine Lucas, Teacher, Rooty Hill High School
- Ms Megan Evans, Teacher, Karonga School
- Ms Sabrina Wiley, Teacher, Karonga School.

Ms McBride tendered the following document:

- Smithfield Public School Case Study booklet.

Ms Evans tendered the following document:

- Video entitled “Karonga School/TAFE Horticulture Taster: Courtyard Renovation”.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Department of Education were sworn and examined:

- Mr Mark Scott, Secretary
- Mr Murat Dizdar, Deputy Secretary, School Operations and Performance
- Ms Robyn Bale, R/Executive Director, Learning and Wellbeing
- Ms Jane Thorpe, Executive Director, Employee Performance and Conduct
- Mr Mark Grant, Executive Director, Leadership and High Performance
- Ms Melissa Clements, Director, Disability, Learning and Support.

Mrs Maclaren-Jones left the meeting.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Tobias Cook, former student.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 4.55 pm.

4.9 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept the following documents tendered during the public hearing:

- Document of South Pacific Educators in Vision Impairment entitled “Professional Standards Elaborations for Specialist Teachers (Vision Impairment): Career Stages”, tendered by Mr Cavalletto.
- Document of South Pacific Educators in Vision Impairment entitled “SPEVI Principles and Practice: Guidelines for quality education of learners with vision impairment”, tendered by Mr Cavalletto.
- Document of National Association of Australian Teachers of the Deaf entitled “Teacher of the Deaf Elaborations of the Australia Professional Standards for Teachers”, dated June 2016”, tendered by Mr Cavalletto.
- Smithfield Public School Case Study booklet, tendered by Ms McBride.
- Video entitled “Karonga School/TAFE Horticulture Taster: Courtyard Renovation”, tendered by Ms Evans.

4.10 Redaction of sensitive information

Resolved, on the motion of Mr Mookhey: That the committee redact the names of certain third parties in evidence given by Mr Tobias Cook.

5. Adjournment

The committee adjourned at 4.58 pm, until Friday 11 August 2017 (public hearing for inquiry into students with disability or special needs in New South Wales schools).

Rebecca Main
Clerk to the Committee

Minutes no. 52

Friday 11 August 2017
Portfolio Committee No. 3 – Education
Macquarie Room, Parliament House, Sydney, 2.00 pm

1. Members present

Mr Amato, *Chair*
Mrs Maclaren-Jones, *Deputy Chair*
Mr Donnelly (substituting for Mr Mookhey)
Mr Martin
Revd Nile
Mr Shoebridge

2. Apologies

Mr Graham

3. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 50 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 28 April 2017 – Email from Ms Jessica Lobo, Senior Sector Development Officer, National Disability Service to secretariat, clarifying statements made at the public hearing of 3 April 2017 (*attached*).
- 19 June 2017 – Email Ms Edwina Turner, Principal, The Crescent School, to secretariat, clarifying statements made at the public hearing of 19 May 2017.
- 20 June 2017 – Email Ms Sheryl Bruffey, Principal, Budawang School, to secretariat, clarifying statements made at the public hearing of 19 May 2017.
- 21 June 2017 – Email from author of submission no. 182 to secretariat, declining the invitation to appear as a witness at the hearing of Friday 23 June 2017.
- 21 June 2017 – Email from Mrs Meaghan Sweeney to secretariat, declining the invitation to appear as a witness at the hearing of Friday 23 June 2017.
- 10 July 2017 – Letter from Ms Danielle Lawless to secretariat, regarding the pending report of the NSW Ombudsman and the ability to make submissions to the committee after the report is tabled.
- 14 and 22 July 2017 – Emails from Mr Robert Deacon to secretariat, providing additional information to evidence given at public hearing of 23 June 2017.
- 31 July 2017 – Email from Dr Sally Robinson to secretariat, providing additional information to evidence given at public hearing of 8 June 2017.

- 1 August 2017 – Email from Ms Kathryn McKenzie, Director, Disability, NSW Ombudsman, to secretariat, advising that the NSW Ombudsman’s report into behaviour management in schools will be tabled in Parliament on 10 August 2017.
- 9 August 2017 – Email from Dr Don Gillies, Specific Learning Difficulties Association of NSW, to secretariat, providing additional information to evidence given at public hearing on 23 June 2017.
- 10 August 2017 – Email from Ms Kathryn McKenzie, Director, Disability, NSW Ombudsman, to secretariat, attaching the NSW Ombudsman’s final report from its inquiry into behaviour management in schools.
- 11 August 2017 – Email from Ms Marguerite Grey, Principal Project Officer, Disability, NSW Ombudsman, to secretariat, advising of a public forum held late last year on *Addressing the abuse, neglect and exploitation of people with disability*.

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Steve Kinmond, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman
- Ms Kathryn McKenzie, Director Disability, NSW Ombudsman

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 3.09 pm.

5.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4a, 115a, 200a and 426.

5.3 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Revd Nile: That the committee authorise the publication of submission no. 418a with the exception of the author’s name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality (as identified by the secretariat)

Resolved, on the motion of Revd Nile: That the committee authorise the publication of submission no. 424, with the exception of identifying and sensitive information regarding third parties, which is to remain confidential, as per the recommendation of the secretariat.

5.4 Confidential submissions

Resolved, on the motion of Revd Nile: That the committee keep submission nos. 134a and 425 confidential, as per the request of the author.

5.5 Answers to questions on notice and supplementary questions

Resolved, on the motion of Revd Nile: That the committee authorise the publication of the answers to questions on notice and supplementary questions provided by:

- Witness D, received 21 June 2017
- Ms Carolynne Merchant and Ms Mandy Shaw, NSW Department of Education, received 21 June 2017

- Occupational Therapy Australia, received 21 June 2017
- People with Disability Australia, received 30 June 2017
- Ms Robyn Christofides, received 30 June 2017
- Ms Lyn Gardon, Department of Education, received 5 July 2017
- National Disability Services, received 07 July 2017
- Mr Mark Scott, NSW Department of Education, received 26 July 2017
- Office of the Advocate for Children and Young People, received 27 July 2017
- Ms Allison Gentle, received 27 July 2017
- Rooty Hill High School, received 27 July 2017
- Royal Institute for Deaf and Blind Children, received on 1 August 2017.

5.6 Answers to questions on notice provided by Smithfield Public School

Resolved on the motion of Revd Nile: That the committee authorise the publication of the answers to questions on notice provided by Smithfield Public School, with the exception of identifying information regarding a third party individual, which is to remain confidential.

5.7 Answers to questions on notice provided by Smithfield Public School

Resolved on the motion of Revd Nile: That the committee authorise the publication of the answers to questions on notice provided by Smithfield Public School, with the exception of identifying information regarding a third party individual, which is to remain confidential.

5.8 Publication of cover letter to the answer to a question on notice provided by Witness D

Resolved on the motion of Revd Nile: That the committee keep the cover letter to the answer to a question on notice provided by Witness D confidential, as per the request of the author.

5.9 Publication of *in camera* transcripts

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the *in camera* transcripts from 8 May 2017 and 19 May 2017, with the exception of witness names and other identifying information, which is to remain confidential, as per the request of the witnesses.

5.10 Publication of correspondence received from Arrowsmith

Resolved, on the motion of Mr Shoebridge: That the secretariat:

- review the correspondence and annexures from Ms Barbara Arrowsmith Young, Director, Arrowsmith School and Program, received on 9 August 2017, to check for issues of confidentiality and adverse mention
- circulate to members with proposed redactions along with a suggested resolution regarding publication.

6. Adjournment

The committee adjourned at 3.21 pm, until Friday 15 September 2017 (report deliberative).

Rebecca Main
Clerk to the Committee

Draft minutes no. 57

Friday 15 September 2017

Portfolio Committee No. 3 - Education

Room 814/815, Parliament House, Sydney at 9.40 am

1. Members presentMr Amato, *Chair*

Mr Farlow (substituting for Mrs Maclaren-Jones) (until 10.43 am)

Mr Graham

Mr Mookhey

Dr Phelps (substituting for Mr Martin)

Mr Shoebridge

2. Apologies

Revd Nile (attending a public hearing for the Joint Committee on the ICAC)

3. Previous minutes

Resolved, on the motion of Mr Graham: That draft minutes no. 52 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 1 August 2017 – Email from Mr Philip Whitefield, President, Australian Association of Special Education, NSW Chapter, to secretariat, regarding the resolution of concerns raised in their supplementary submission about the withdrawal of the special education unit in initial teacher education courses
- 23 August 2017 – Email from Mr John Hattie, Laureate Professor, Melbourne Graduate School of Education, to secretariat, regarding claims about the Arrowsmith program
- 6 September 2017 – Email from the author of submission no. 406 to secretariat, attaching additional information to her submission and in response to comments made at the public hearing of 8 May 2017.

Sent

- 16 August 2017 – Letter from Chair to Ms Barbara Arrowsmith Young, advising of the publication of correspondence received from Arrowsmith and its consideration as part of the evidence to the inquiry.

Resolved, on the motion of Mr Graham: That the following items of correspondence be kept confidential, as per the request of the author or on recommendation of the secretariat where the correspondence contains identifying and/or sensitive information:

- 21 March 2017 – Email from Ms Cassandra Kavanagh to secretariat, regarding the publication of her submission.
- 11 April 2017 – Email from the author of submission no. 257 to secretariat, requesting consideration for parent to appear as a witness.
- 27 April 2017 – Email from the author of submission no. 85, declining the invitation to appear as a witness at the Newcastle hearing.
- 28 April 2017 – Email from Ms Suzanne Robertson to secretariat, requesting to appear as a witness at the Newcastle hearing.
- 1 May 2017 – Email from the author of submission no. 197, declining the invitation to appear as a witness at the Newcastle hearing.
- 4 May 2017 – Email from Mr Tim Hails to secretariat, regarding his son with dyslexia and the need for assistive technologies in school.
- 7 May 2017 – Email from author of submission no. 134 to secretariat, requesting to appear in camera at the hearing on 19 May 2017 in Shellharbour.

- 8 May 2017 – Email from author of submission no. 254 to secretariat, requesting to appear as a witness at the hearing on 19 May 2017 in Shellharbour.
- 9 May 2017 – Email from author of submission no. 24 to secretariat, requesting to appear in camera at the hearing on 19 May 2017 in Shellharbour.
- 13 May 2017 – Email from author of submission no. 250 to secretariat, requesting to appear as an in camera witness at the hearing on 19 May 2017 in Shellharbour.
- 21 June 2017 – Email from Mr David Roy to Chair, requesting an order for the production of State papers under standing order 52.
- 21 June 2017 – Email from author of submission no. 182 to secretariat, declining the invitation to appear as a witness at the hearing of Friday 23 June 2017.
- 6 September 2017 – Email from the author of submission no. 406 to secretariat, attaching additional information to her submission and in response to comments made at the public hearing of 8 May 2017.

5. Inquiry into education of students with a disability or special needs in New South Wales

5.1 Public submission

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission no. 426.

5.2 Partially confidential submissions

Name suppressed submissions

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 335 with the exception of the author's name, which is to remain confidential, as per the request of the author.

Submissions to be considered for partial confidentiality – at the author's request

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission nos. 382 and 427 with the exception of other identifying or sensitive information, which is to remain confidential, as per the request of the author.

5.3 Confidential submission

Resolved, on the motion of Mr Farlow: That the committee keep submission no. 442a confidential, as per the recommendation of the secretariat.

5.4 Answers to questions on notice

Resolved, on the motion of Mr Graham: That the committee authorise the publication answers to questions on notice and supplementary questions provided by NSW Education Standards Authority (NESA), received on 27 July 2017, 11 September 2017 and 12 September 2017.

5.5 Correspondence from Arrowsmith

Resolved on the motion of Mr Mookhey: That the committee:

- authorise the publication of the correspondence and annexures from Ms Barbara Young, Director, Arrowsmith School and Program, on the committee's website, with the exception of identifying information, which is to remain confidential, as per the recommendation of the secretariat
- write to Ms Barbara Young, Director, Arrowsmith School and Program, to advise that her correspondence will be published and considered as part of the evidence to the inquiry.

5.6 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Education of students with a disability or special needs in New South Wales*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted before the introduction to Chapter 1:

‘Children are vulnerable and require special duty of care from Parliament. Children with special needs even more so. We have an obligation to ensure our school system not only does not discriminate but actively brings out the best in all students, especially those with special needs. This was brought home powerfully to the committee by a series of inspiring and engaging submissions from young people with special needs and parents who had succeeded in school and continue to succeed in life. That must be our goal.’

Resolved, on the motion of Mr Mookhey: That paragraph 1.7 be amended by inserting at the end: ‘In particular, the definition for children with additional or special needs can differ between sectors.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.16 be amended by omitting ‘Like the Department’ and ‘also’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.17 be amended by:

- (a) inserting ‘most of’ after ‘is bound by’
- (b) inserting ‘While the Association clearly plays a leadership role, it confirmed they had no power to compel compliance on any individual school.’ As a new sentence after ‘endeavour’.

Resolved, on the motion of Mr Mookhey: That paragraph 2.19 be amended by inserting ‘strongly’ after ‘The committee acknowledges and’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.19:

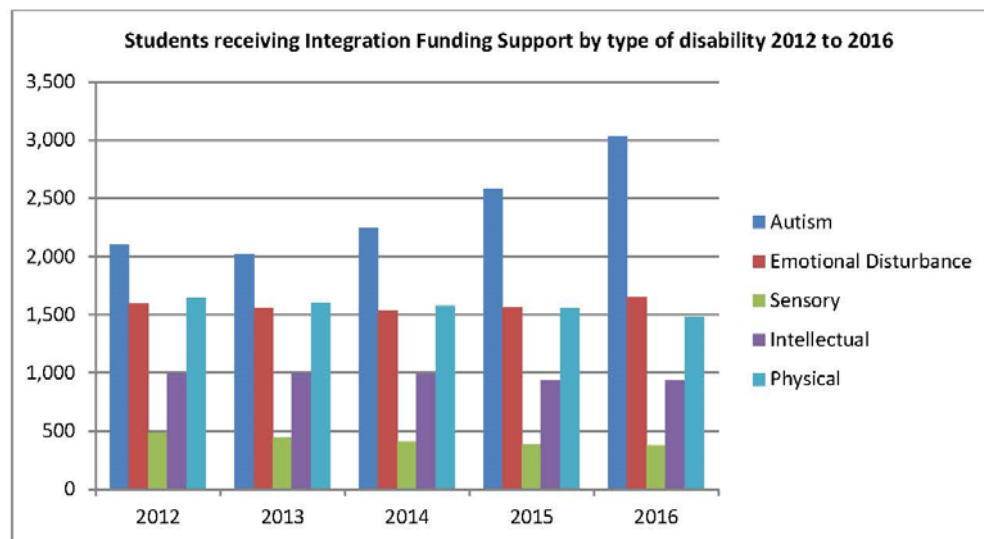
‘The committee affirms the fundamental premise that every child is equal and every child in this state, regardless of their academic ability, special needs or material circumstances is entitled to a non-discriminatory, inclusive and world class education in a New South Wales school.’

Resolved, on the motion of Mr Shoebridge: That paragraph 2.55 be amended by omitting the words ‘, particularly within the government sector’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and table be inserted after paragraph 2.107:

‘The table below demonstrates the increase in funding needed to meet the challenge of the increased prevalence of students with autism.’

Table 1 Number of students receiving Integration Funding Support by type of disability



Source: Department of Education data 2016

[FOOTNOTE: Submission 135, NSW Government, p 10.]

Resolved, on the motion of Mr Shoebridge: That paragraph 2.116 be amended by inserting 'simply' before 'the setting which it is delivered'.

Resolved, on the motion of Mr Shoebridge: That Finding 1 be amended by inserting ', while there are many striking instances of excellence,' after 'That'.

Resolved, on the motion of Mr Graham: That the following new finding be inserted after Finding 1:

'Finding X

That the committee:

- supports the cultural, legislative and policy shift from segregating students with disabilities and special needs to including them mainstream schooling in all systems, where reasonably practical
- believes this reflects a broader social change towards the inclusion of people with disabilities
- recognises that decisions about enrolment should primarily be matters for well-informed parental choice.'

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after Finding X:

'That the NSW Government formalise a presumption applicable to all New South Wales schools that a child is to be educated in an inclusive mainstream setting, unless there are compelling individual reasons for other arrangements.'

Resolved, on the motion of Mr Graham: That the following new paragraph be inserted after the new recommendation:

'In practice the committee believes this would include the Department of Education website reflecting mainstream classes as the first, default and preferred option for students with disabilities and special needs and for example, the enrolment form to include information about the rights of students with disability. This information would be provided to all parents at enrolment, initial meetings, at transition stages and when a disability or functional impairment is identified.'

Resolved, on the motion of Mr Mookhey: That paragraph 2.137 be amended by omitting 'many' and inserting instead 'widespread'.

Mr Mookhey moved: That paragraph 2.138 be amended by omitting the sentence: 'The committee is encouraged by the Department's commitment to the students in its care but urges action to accompany this commitment.'

Question put.

The committee divided.

Ayes: Mr Graham, Mr Mookhey.

Noes: Mr Amato, Mr Farlow, Dr Phelps, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.138 be amended by inserting at the end:

'We also accept that there are many instances where government schools provide an exemplary inclusive and supporting education for children with special needs. Our concern is the lack of consistency.'

Resolved, on the motion of Mr Mookhey: That paragraph 2.165 be amended by:

- omitting 'can be difficult' and inserting instead 'is difficult'
- inserting 'for parents' after 'at times overwhelming'.

Mr Mookey moved: That paragraph 2.167 be amended by omitting: ‘The committee considers the Department’s commitment to its relationship with parents positive and encouraging, and its approach warranted. Educators are experts in educating.’

Question put.

The committee divided.

Ayes: Mr Graham, Mr Mookhey.

Noes: Mr Amato, Mr Farlow, Dr Phelps, Mr Shoebridge.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 2.182 be omitted:

‘While the committee acknowledges the many weaknesses in the way education is currently being provided to students with disabilities and special needs, the committee is hopeful that there is a constructive, meaningful and positive way forward that includes the successful collaboration of all who have the best interests of these students at heart.’

and the following new paragraph be inserted instead:

‘The committee is concerned that many students with a disability are not receiving the quality education to which they are entitled, and strongly supports a constructive, meaningful and collaborative reform program to rectify poor practices, with regular reporting.’

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after paragraph 2.182:

‘One of the striking matters that came through during the inquiry is that diversity is not a binary division between ‘children with special needs’ and a ‘normal’ student population. Every class in every school contains children with different skills, learning methods, needs and abilities.

An individualised learning approach, focusing on the needs and circumstances of each individual child, benefits not just children with identified ‘special needs’ but every child in a classroom.

Viewed in this way every child has ‘special needs’ and every child benefits from a system of education that treats them as being part of a diverse group of people who all need individualised approaches to learning and teaching.

This is a huge challenge to any classroom teacher and it is a huge challenge to the education system and our teaching universities. However it is the end we must be striving for not just to suit the needs of an identified cohort of children with ‘special needs’ but to bring out the best in every student in every New South Wales classroom.’

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after paragraph 2.182:

‘Recommendation X

That each year the Minister for Education make a Ministerial Statement in Parliament which reports on the educational progress of students with a disability in New South Wales.’

Resolved, on the motion of Mr Mookhey: That the following new finding be inserted after paragraph 3.52:

‘Finding X

That New South Wales schools will not receive the full allocation as originally agreed under the NERA due to the ‘Gonski 2.0’ policy adopted by the Federal Government, and this will have impacts on students with a disability.’

Resolved, on the motion of Mr Shoebridge: That Recommendation 2 be amended by inserting ‘works with the Commonwealth Government to increase the overall funding available to.’ after ‘NSW Government’:

Resolved, on the motion of Mr Mookhey: That paragraph 3.65 be amended by inserting ‘many’ before ‘stakeholders’.

Resolved, on the motion of Mr Mookhey: That paragraph 3.97 be amended by omitting all words before ‘Further discussion of access to specialist support is made in Chapter 4.’ and inserting instead:

‘The committee is of the view that the NDIS has potential benefits for the small percentage of students who are eligible to receive support at school. Thought should be given to how funding for individual students under the NDIS could be pooled in a school setting to get the best outcomes for the students that require specialist services, such as when a number of students in the one school or classroom require the services of a speech pathologist.’

Resolved, on the motion of Mr Mookhey: That paragraph 3.116 be amended by omitting ‘reviewed’ and inserting ‘increased’.

The committee considered amendments in chapter 4.

Resolved, on the motion of Mr Graham: That the following new paragraphs inserted after paragraph 4.163:

‘The committee is concerned by evidence that secondary students at SSPs do not have equal access to careers advice, counselling, specialist classrooms such as labs or kitchens and physical education as a result of the way that funding is structures.

Students with a disability are more, not less, likely to require this support than mainstream high school students. They are less, not more, likely to receive this support as a result of the existing funding formula.’

Mr Graham moved: That the follow new paragraph and recommendation be inserted after his new paragraph above:

‘The committee does not accept the Departments assurances that the different level of provision is not detrimental to students. The committee remains concerned the existing funding formula is at risk of being in breach of the Department’s obligations to anti-discrimination law.

Recommendation X

That the Department of Education commission the Anti-Discrimination Board to initiate a Legal Compliance audit of its responsibilities under the disability discrimination law, with the resourcing to be provided by the Department. Such an audit should look specifically at the funding model for SSPs and whether the difference in support for students is in line with the principles of anti-discrimination law.’

Question put.

The committee divided.

Ayes: Mr Graham, Mr Mookhey, Mr Shoebridge.

Noes: Mr Amato, Mr Farlow, Dr Phelps.

Question resolved in the negative on the casting vote of the chair.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.157 be amended by inserting ‘compliance with disability discrimination law’ after ‘equitable basis’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after 4.161 ‘The Department of Education advised that in relation to its legal obligations ‘[t]he department’s Legal Services Directorate provides legal advice to schools and departmental staff on discrimination law. The department has also sought external legal advice on disability discrimination from time to time and will continue to do so as issues arise.’

[FOOTNOTE: Answers to questions on notice, NSW Government, p 8]

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after paragraph 4.163:

‘Recommendation X

That the NSW Department of Education consider publishing the advice it has been given in relation to its compliance with disability discrimination law in regards to service provision in Schools for Specific Purposes.’

Resolved, on the motion of Mr Shoebridge: That paragraph 4.163 be amended by inserting the following at the end ‘Implementing these recommendations are essential if New South Wales schools are to meet the disability standards set in state and federal legislation.’

The committee returned to amendments in chapter 3.

Mr Farlow left the meeting.

Resolved, on the motion of Mr Shoebridge: That the following be inserted at the end of paragraph 3.117 ‘This must include additional funding for SSPs to ensure their student population has access to the same services as their mainstream counterparts, such as physical education and careers advice, and adequate teaching support when executive teachers take time for their additional duties.’

Resolved, on the motion of Mr Mookhey: That paragraph 3.118 be amended by inserting ‘the Department of Education advised that’ before ‘all funding is provided to the school’.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.140 be amended by:

- omitting ‘and supports’ before ‘the Local Schools’ and inserting instead ‘that’
- inserting ‘However, we acknowledge the concerns that it lacks transparency in how funding is allocated.’ at the end of the paragraph.

Resolved, on the motion of Mr Graham: That paragraph 3.142 be amended by omitting ‘investigate the most appropriate way’ and inserting instead ‘require’ and omitting ‘can’ and inserting instead ‘to’.

Resolved, on the motion of Mr Graham: That Recommendation 7 be amended by omitting ‘investigate the most appropriate way’ and inserting instead ‘require’ and omitting ‘can’ and inserting instead ‘to’.

Resolved, on the motion of Mr Shoebridge: That Recommendation 7 be amended by inserting ‘That the Department of Education develop a new reporting mechanism to provide greater transparency and include specific criteria identifying how the needs of students with special needs are being met from the available resources.’ as a dot point in the recommendation.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.47 be amended by omitting all words after ‘the committee’ and before ‘may therefore’ and insert instead ‘is concerned that educational advice does not always support the model of inclusion adopted by the Department which’.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.49 be amended by inserting the following new sentence at the end ‘The lack of adequate or reliable data is a barrier to determining the scale of the problem faced by parents and difficulties parents have in enrolling their children in the school of their choice.’

Resolved, on the motion of Mr Shoebridge: That the following two new recommendations be inserted after paragraph 4.49:

‘Recommendation X

That the Department of Education require reporting and data collection on all children with special needs who have sought enrolment in a school or support class and not obtained that enrolment.

Recommendation X

That the Department of Education create a public dashboard that provides:

- twice yearly updated data on the number of students enrolled in Schools for Specific Purposes and support classes
- data on students not enrolled but seeking enrolment in Schools for Specific Purposes and support classes and on waiting lists for enrolment in these settings
- this data on a regional basis.'

Resolved, on the motion of Mr Graham: That the following new recommendation be inserted after paragraph 4.49:

'Recommendation X

That the Department of Education implement a system for gathering data about the school setting for students with a disability from each school district, with tracking that monitors the numbers who attend special and mainstream settings.

Resolved, on the motion of Mr Mookhey: That Recommendation 9 be amended by inserting after 'adequately' 'trained' and inserting after 'staffed' 'remunerated'.

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after paragraph 4.82:

'Recommendation X

That the dashboard, referred to in Recommendation X' include data on the proportion of students with disabilities and special needs who have Individual Education Plans.'

Resolved, on the motion of Mr Mookhey: That the following new paragraph and recommendation be inserted after 4.89:

'Committee comment

The committee endorses the NSW Ombudsman's findings. The committee calls on the NSW Government to urgently implement the Ombudsman's proposals in its Inquiry into behaviour management in schools.

Recommendation X

That the NSW Government urgently implement the NSW Ombudsman's proposals in its Inquiry into behaviour management in schools.'

Resolved, on the motion of Mr Mookhey: That the following new paragraph be inserted after 4.104:

'Furthermore, the committee is deeply concerned by the substantial body of evidence that demonstrates that the Arrowsmith Program is not an evidence-based program which can change the trajectories of student outcomes over time. The committee is worried that parents might spend thousands of dollars on program offered in New South Wales Schools that are not supported by evidence.'

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after his new paragraph above:

'Recommendation X

That the NSW Government only offer programs in New South Wales schools that the Department of Education can certify are supported by peer-reviewed evidence of change in the trajectories of student outcomes over time.'

Resolved, on the motion of Mr Graham: That the following new recommendation be inserted after paragraph 4.104:

‘Recommendation X

That, given the concerns raised regarding the efficacy of Reading Recovery, the Department of Education fast track its assessment of this program and publish the outcome of its review.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted after paragraph 4.133:

‘It should not be left to the individual approaches of schools and principals to establish best practice arrangements so that SSPs and mainstream schools co-operate fully to ensure students at SSP’s have access to a full curriculum. It should be an obligation of the Department to establish best practice guidelines to assist this occurring.

Recommendation X

That the NSW Department of Education provide formal best practice guidelines to assist Schools for Specific Purposes work with neighbouring mainstream schools to deliver a full curriculum to their students.’

Resolved, on the motion of Mr Mookhey: That paragraph 4.150 be amended by inserting ‘volume of’ after ‘acknowledges’.

Resolved, on the motion of Mr Mookhey: That paragraph 4.151 be amended by inserting ‘avoidable’ before ‘difficulties’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and recommendation be inserted after paragraph 4.151:

‘No child should be missing the opportunity to have their special needs considered because of the cost in obtaining supporting medical reports. There should be a means tested system in place to ensure that funding is available to parents to make sure this is the case.

Recommendation X

That, as part of the NSW Department of Education’s review of the Access Request process it consider the need to meet the reasonable costs to parents of obtaining the necessary medical reports to support access requests for students with disabilities and special needs.’

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after paragraph 4.151:

‘Recommendation X

That the NSW Department of Education reform the Access Request process so that:

- all access requests applications are resolved within 28 days
- real time data on the number of applications received, the numbers accepted, the numbers rejected, and the reasons for rejection is published.’

Resolved, on the motion of Mr Shoebridge: That paragraph 4.182 be amended by inserting the following at the end ‘The resourcing standard for speech pathology established in the Queensland education system appears to be the best practice standard in Australia and close consideration should be given by the Department to establishing a similar standard in New South Wales.’

Resolved, on the motion of Mr Shoebridge: That paragraph 4.193 and Recommendation 14 be amended by inserting ‘minimum’ before ‘ratio’.

Mr Graham left the room.

Mr Mookhey moved:

- That paragraph 6.76 be amended by omitting the sentence ‘The committee is deeply concerned by reports of the ill-treatment and abuse of students with disability and special needs that have been shared in this inquiry’ and inserting instead ‘However the committee acknowledges further investigations are needed, which have sufficient powers to properly investigate the Department’s conduct.’
- That the following new recommendation be inserted after paragraph 6.75:

‘Recommendation X

That the NSW Government supports calls for a Royal Commission into the abuse of disabled people.’

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Shoebridge.

Noes: Mr Amato, Dr Phelps

Question resolved in the negative on the casting vote of the chair.

Mr Graham re-joined the meeting.

Resolved, on the motion of Mr Mookhey: That the following new finding be inserted after paragraph 6.78:

‘Finding X

That level of allegations of ill-treatment of disabled children in New South Wales Schools, including those under the Department’s supervision, and the number of reportable incidents, are unacceptable.’

Mr Mookhey moved: That paragraph 6.95 be amended by omitting ‘but’ and inserting ‘and’.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Graham, Mr Mookhey, Dr Phelps.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey: That the following new paragraph and recommendation be inserted after paragraph 6.159:

‘In addition, the committee remains concerned that the current complaint mechanisms for government schools are inadequate and in need of urgent reform.’

Recommendation X

That the NSW Department of Education reform its complaints policy so that:

- plain English advice is provided to parents about the rights to complain
- there is an independent complaints process for a school’s unreasonable refusal to enrol a child with a disability or to make reasonable adjustments
- no principal investigates a complaint against themselves.’

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after Recommendation 23:

‘Recommendation X

That the NSW Department of Education, in its procedures for complaints regarding allegations of misconduct or reportable conduct:

- must notify parents if a matter involving their child is referred to the Employee Performance and Conduct Directorate (EPAC)
- establish a process for parents to refer a matter to EPAC
- inform parents of the outcome of any EPAC investigation involving their child
- maintain existing industrial entitlements and the right to due process for staff employed by the Department.

Resolved, on the motion of Mr Graham: That paragraph 6.164 be amended by omitting ‘is encouraged by’ and inserting instead ‘notes’.

Resolved, on the motion of Mr Graham: That Recommendation 24 be amended by inserting at the end: ‘In particular, this case manager should be in contact with each family during the enrolment process in order to facilitate well informed choices.’

Resolved, on the motion of Mr Shoebridge:

- (a) The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- (b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- (c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- (d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- (e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- (f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- (g) Dissenting statements be provided to the secretariat by 5.00 pm Monday 18 September 2017;
- (h) That the report be tabled on Thursday 21 September 2017.

6. Adjournment

The committee adjourned at 12.05 pm, *sine die*.

Rebecca Main
Clerk to the Committee

Appendix 4 Dissenting statement

The Hon David Mookhey MLC and The Hon John Graham MLC, Australian Labor Party

The committee process for this report has been characterised by a high degree of bipartisanship, and has produced a strong report.

The findings are strongly supported.

There was one single issue on which we felt a further statement was necessary. That was in relation to the issue of the Schools for Special Purposes funding formula.

The Committee has stated its concerns in the report about this issue. Under this funding formula high schools students at Schools for Special Purposes are funded according to a primary school funding formula. As a result the Committee heard evidence they are less likely to have access to careers advice, counselling, physical education, or school laboratories and kitchens than mainstream students. This is despite the fact that the Committee believes that they are more, not less, likely to need those educational supports.

This funding formula was the subject of a specific recommendation in the last Legislative Council review this area in 2010.

In response to questions on notice the Department of Education has said:

“However, the department notes that not all programs and courses are offered at every school in NSW... The fact that different schools have different combinations of offerings is not, of itself, a denial of a benefit to some students. It may be evidence that all schools seek to tailor their programs to the needs of their students.”

The Department argues the case that the provision of support to students is different, but substantively equal. That case seems hard to reconcile with the evidence that was put before the Committee.

We do not accept the Department’s assurances that the different level of provision is not detrimental to students, and therefore at risk of being in breach of the Department’s obligations to anti discrimination.

We are of the view that the Department of Education should commission the Anti-Discrimination Board to initiate a Legal Compliance audit of its responsibilities under the Disability Discrimination legislation both at federal and state level. Such an audit should look specifically at the funding model for Schools for Specific Purposes, and whether the difference in support for students is in line with the principles of that legislation.

