



advocacy  
for inclusion



People with  
Disabilities  
ACT Inc

# **Inquiry into the Management of ACT School Infrastructure**

***Submission***

# About Advocacy for Inclusion

Advocacy for Inclusion incorporating People with Disabilities ACT is a leading independent organisation providing dedicated individual and self-advocacy services and training, information and resources in the ACT. We deliver reputable national systemic advocacy informed by our extensive experience in individual advocacy and community and government consultation.

As a Disabled People's Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. Advocacy for Inclusion speaks with the authority of lived experience and is strongly committed to advancing opportunities for the insights, experiences and opinions of people with disabilities to be heard and acknowledged.

Advocacy for Inclusion operates under a human rights framework. We uphold the principles of the United Nations *Convention on the Rights of Persons with Disabilities* and strive to promote and advance the human rights and inclusion of people with disabilities in the community. Advocacy for Inclusion is a declared public authority under the *Human Rights Act 2004*.

## Contact details:

2.02 Griffin Centre

20 Genge Street

Canberra City ACT 2601

Phone: 6257 4005

Email: [info@advocacyforinclusion.org](mailto:info@advocacyforinclusion.org)

ABN: 90 670 934 099

Prepared and written by Stacy Rheese, Team Leader Policy

Authorised by Nicolas Lawler, Chief Executive Officer

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Advocacy for Inclusion acknowledges the Aboriginal and Torres Strait Islander peoples as Traditional Custodians of the lands where we live, learn and work.



We respect and celebrate diversity of individuals, including those amongst the lesbian, gay, bisexual, trans, and intersex communities and we value and promote inclusion and diversity in our communities.

# Background

In Australia, 89% of school-age children and young people with disability attend school.<sup>1</sup> Overall, people with disability in Australia have lower levels of educational attainment,<sup>2</sup> and are more likely to leave school at a younger age.<sup>3</sup> Access to education and the level of education which is attained by people with disability has significant impacts on outcomes in later life, including higher education opportunities, social inclusion, employment, financial security, and independence.<sup>4</sup> While many young people with disability in Australia receive support to access education, not all students who require support receive it, and many who are receiving some level of support are not receiving the necessary amount:

- Of students with disability attending mainstream classes almost 1 in 3 (29% or 77,400) need support but do not receive any, or need more support than they receive;
- 1 in 3 (33% or 22,200) students with disability attending specialist classes conducted in mainstream schools need more support than they receive; and
- 1 in 3 (33% or 14,900) students with disability attending specialist schools need more support than they receive.<sup>5</sup>

The *Interim Report* of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) which was released in October 2020, highlighted key drivers and specific forms of violence, abuse, neglect and exploitation occurring nationally within the context of education of children and young people with disability. Many of the experiences highlighted by the Royal Commission were consistent with individual experiences and systemic trends identified by Advocacy for Inclusion (AFI) through our advocacy services in the ACT. These have included:

- Exclusion from mainstream education, including curriculum, regular classroom activities, and social and sporting activities such as school camps and sports days;
- Low expectations of the potential of students with disability, often accompanied by less effort being seen to be provided to support educational achievement;
- Concerning use of restrictive practices and seclusion, including significant rates of suspension for students with disability;
- Inaccessibility or lack of funding and resourcing for supports, or complex and opaque explanations of funding use;
- Bullying and abuse from other students and staff, and concerns for wellbeing and safety;
- Lack of disability awareness across staff and supports;
- Difficulties accessing education and support, including lengthy and difficult processes for parents and carers to communicate with schools, make requests or complaints, and have their concerns addressed;
- Students with disability changing classes or schools with higher frequency;

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<sup>1</sup> The Australian Institute of Health and Welfare (AIHW), *People with disability in Australia* 2020 p 217.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid p 234.

<sup>5</sup> Based on ABS 2019 data as cited in Ibid p 249.

- Inconsistencies and lack of collaboration with schools and outside support providers and services.<sup>6</sup>

The management of ACT school infrastructure can have significant impact on the educational experience and attainment of students with disability, and as a result, can also enormously impact later life outcomes and wellbeing. AFI welcomes the opportunity to provide recommendations to support strategic and considered approaches to management of school infrastructure, and recognises the opportunity provided through management of school infrastructure to achieve significant inclusive policy outcomes in education and the wider community.

## Inclusion

'Equity' and 'Inclusion' are key principles of the ACT Government *The Future of Education Strategy*.<sup>7</sup> The Royal Commission has highlighted that many consider that 'inclusive education is not well implemented in Australia' due in part to 'ambiguity on what constitutes inclusive education and how it is practiced'.<sup>8</sup> The Royal Commission has also raised the fact that 'as yet, no Australian jurisdiction has expressly recognised that all students with disability have a right, in law, to inclusive education'.<sup>9</sup>

Inclusive education is a fundamental human right recognised in Article 24 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD). Article 24 provides that States Parties shall ensure that people with disability are not excluded from the general education system on the basis of disability and can access an inclusive, quality and free education on an equal basis with others. This includes the provisions of 'reasonable accommodation' and support.<sup>10</sup> In *General comment No. 4*, the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) provides additional insight into what equates to 'inclusive education' and differentiates this from both *integration* and *segregation*. Integration is described as 'the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions'<sup>11</sup> while segregation 'occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities'.<sup>12</sup> Neither equates to *inclusion* under Article 24, and

<sup>6</sup> See also The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim Report* October 2020 p 230.

<sup>7</sup> ACT Government, *The Future of Education An ACT education strategy for the next ten years* 2018 pp 8 & 9.

<sup>8</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability *Overview of Responses to the First Education and Learning Issues Paper* 28 July 2020 p 6.

<sup>9</sup> The Royal Commission, *above n 6* p 226.

<sup>10</sup> Article 24, *Convention on the Rights of Persons with Disabilities*.

<sup>11</sup> Committee on the Rights of Persons with Disabilities *General Comment No. 4 (2016) on the right to inclusive education* CRPD/C/GC/4 25 November 2016 para 11.

<sup>12</sup> *Ibid.*

*General Comment No. 4* further emphasises that 'integration does not automatically guarantee the transition from segregation to inclusion.'<sup>13</sup>

The CRPD Committee has continued to call on Australia to '[a]ddress the increasing rate of segregation, seclusion and isolation and the lack of age-appropriate settings for students with disabilities at all levels, in particular Aboriginal and Torres Strait Islander students, and redirect adequate resources to a nationwide inclusive education system for all students.'<sup>14</sup> Additionally, over sixty disability and advocacy organisations in Australia have joined the *#EndSegregation* campaign in recognition that students with disability are often unable to access an equitable education alongside their non-disabled peers, and that segregated education is often a 'pipeline' to continued segregation in later life.<sup>15</sup>

The CRPD Committee has made it clear that the full realisation of inclusive education under Article 24 'is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system.'<sup>16</sup>

Clear evidence exists to justify the implementation of fully inclusive education for educational, social and economic reasons:

*'For over 40 years, the body of relevant research into education of students with disability has overwhelmingly established inclusive education as producing superior social and academic outcomes for all students. Further, the research has consistently found that academic and social outcomes for children in fully inclusive settings are without exception better than in the segregated or partially segregated environments (e.g. "education support units" or "resource classrooms"). Unfortunately segregated education remains a practice that has continued mostly for historical reasons and which continues to be suggested to families and educators as an appropriate option, despite having virtually no evidence basis.'*<sup>17</sup>

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<sup>13</sup> CRPD Committee *above* n 11, para 11.

<sup>14</sup> United Nations, Committee on the Rights of Persons with Disabilities *Concluding observations on the combined second and third periodic reports of Australia CRPD/C/AUS/CO/2-3* 15 October 2019 para 46 (b).

<sup>15</sup> Disability Advocacy Network Australia *#EndSegregation – Over fifty disability rights and advocacy organisations call for an end to segregation* <<https://www.dana.org.au/end-segregation/>>.

<sup>16</sup> CRPD Committee *above* n 11, para 40.

<sup>17</sup> All Means All, Australian Alliance for Inclusive Education, *Inclusive Education – What Does the Research Say?* <<https://allmeansall.org.au/research/>>;

See also Boyle, Christopher & Anderson, Joanna *The Justification for Inclusive Education in Australia PROSPECTS* volume 49, pages 203–217(2020), 03 September 2020;

Dr. Hehir T, et al *A Summary of the Evidence on Inclusive Education* August 2016.

## Recommendation:

### 1. The ACT Government adopt a definition of 'inclusion' consistent with Article 24 and General Comment No. 4.

AFI recommends that the ACT Government formally adopts and commits to the principles of a definition of 'inclusion' consistent with Article 24 of the *CRPD* and the further explanatory statements in *General Comment No. 4* to reduce ambiguity and support better outcomes for students with disability. Committing to the principles of this definition of inclusion will reduce barriers to achieving fully inclusive education, and the associated improved outcomes for all students. AFI notes this recommendation aligns with Australia's obligations under the *CRPD* and supports the following initiatives of *The Future of Education* strategy:

- 'Equity, inclusion, access and student agency are strengthened as the bottom line for school initiatives.'<sup>18</sup>
- 'Review and amend the Education Act 2004 to strengthen student agency, equity, access and inclusion.'<sup>19</sup>

Adopting this definition also provides a significant framework for future strategy, which would have significant implications for the management of school infrastructure. AFI recommends consideration be given to existing resources such as *A Roadmap for Achieving Inclusive Education*<sup>20</sup>, and existing case studies of transitions from segregation such as Queensland's Thuringowa State High School.

## Access

Another key principle of the ACT Government's *The Future of Education* strategy is Access.<sup>21</sup> Currently, many schools in the ACT are limited to responding to individual accessibility requirements such as reasonable adjustments and supports on a case-by-case basis. This individual response approach can contribute to inflexibility and limited accessibility as well as significant difficulty faced by students, parents and carers in accessing education or requesting adjustments. Similarly, barriers may be encountered due to lack of funding and capacity to implement individual accommodations. In some cases, an inability to respond to individual reasonable adjustments can equate to discrimination or restrictive practices.<sup>22</sup>

Individualistic responses to addressing need also creates the potential to miss many opportunities to improve accessibility for students whose needs are not identified or well understood. This is of

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<sup>18</sup> ACT Government, *above n 7*, p 13.

<sup>19</sup> *Ibid* p 11.

<sup>20</sup> Australian Coalition for Inclusive Education *Driving change: A roadmap for Achieving Inclusive Education in Australia* October 2020.

<sup>21</sup> ACT Government, *above n 7*, p 9.

<sup>22</sup> The Royal Commission, Overview *above n 8*, p 3.

particular concern for students with undiagnosed disabilities, those experiencing communication barriers, those who have 'invisible' disabilities, or others whose disability is not easily recognised or categorised. It has been raised through the Royal Commission that 'schools may not feel obliged to provide adequate support' for these students, and this creates situations which 'heighten the risk of underachievement, low self-esteem and poor mental health, which may result in both educational and emotional neglect.'<sup>23</sup>

Additionally, historically and recently, we have been made aware of instances of ACT school infrastructure being utilised in restrictive practices and seclusion to restrict and prevent access.<sup>24</sup>

## **Recommendations:**

### **2. All school infrastructure meets accessibility standards and Universal Design principles.**

AFI recommends that all ACT school infrastructure is built to meet the highest possible accessibility standards, while also being designed in line with Universal Design principles. This will reduce the need for retrofitting, or delays in responding to individual requirements. Implementing Universal Design principles is also likely to significantly benefit those discussed above who may face additional difficulty in having their access requirements met individually.

This recommendation also has the additional benefit of increasing accessibility to staff, parents, carers, and other services entering the school, whose individual accessibility requirements a school may not necessarily be resourced to respond to individually. AFI notes that the ACT Government described the introduction of minimum mandatory standards into the National Construction Code as 'a start of a journey of ensuring universal design in all homes.'<sup>25</sup> AFI would welcome the extension of that vision to include all ACT schools. AFI emphasises the importance of infrastructure being co-designed with people with lived experience and expertise of disability and access, to ensure it is appropriate and suitable.

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<sup>23</sup> The Royal Commission, Overview *above n 8*, pp 2-3.

<sup>24</sup> the applicant reported that he had found his son at lunch time (on being collected for a physiotherapy appointment) alone, distressed and dishevelled inside a locked classroom.' In *Applicant 201987 v Director-General, Education Directorate (Administrative Review)* [2020] ACAT 120; See also Macdonald, Emma *Cage for Autistic Child at Canberra School a Shocking Wake-Up Call* The Canberra Times, 9 September 2015.

<sup>25</sup> Vassarotti, Rebecca MLA ACT Government Secures National Mandatory Accessible Standards Media Release, Released 01/05/2021.

## Recommendations cont.

### 3. Improved identification and education regarding the use of infrastructure for restrictive practices.

AFI recommends improved oversight and education to ensure provision and use of infrastructure is consistent with the principles of the *Senior Practitioners Act 2018*, the *Human Rights Act 2004* and the *CRPD*.

## Mental Health

Youth mental health is a significant area requiring additional support in ACT schools. 50% of all mental health conditions begin to develop before the age of 14 years, while 75% develop before the age of 25.<sup>26</sup> AFI strongly supports the ACT Government statement that 'it is imperative that we focus on the challenges and issues facing children and young people and look towards strategies and evidence to enhance their mental health and wellbeing.'<sup>27</sup>

AFI notes that particular cohorts statistically experience higher rates of psychological distress and mental illness. Compared to the general population LGBTIQ+ young people are significantly more likely to experience mental ill health, suicidality and suicide attempt, with transgender young people aged 14-25 fifteen times more likely to have attempted suicide in their lifetime.<sup>28</sup> It has been highlighted that '[d]iscrimination and exclusion are the key causal factors of LGBTI mental ill-health and suicidality.'<sup>29</sup>

The prevalence of mental ill health is also higher among Aboriginal and Torres Strait Islander young people compared with non-Indigenous young people, with mental health-related conditions, including suicide, self-inflicted injuries and anxiety disorders the top conditions contributing to overall burden of disease for Indigenous young people aged 10–24.<sup>30</sup>

The Productivity Commission Inquiry into Mental Health identified an '[a]dverse learning environment' as a risk to mental health over the course of life,<sup>31</sup> as well as acknowledging the

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<sup>26</sup> WHO, Available at: <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>, as cited in ACT Government *Review of Children and Young People in the ACT Office for Mental Health and Wellbeing* March 2020 p 3.

<sup>27</sup> ACT Government *above n 26*, p 3.

<sup>28</sup> LGBTIQ+ Health Australia *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People* April 2021 p 1.

<sup>29</sup> Rosenstreich, G. (2013) *LGBTI People Mental Health and Suicide*. Revised 2nd Edition. National LGBTI Health Alliance. Sydney p 4.

<sup>30</sup> Australian Institute of Health and Welfare *Aboriginal and Torres Strait Islander Adolescent and Youth Health and Wellbeing* 2018 p 128.

<sup>31</sup> Australian Government *Productivity Commission Inquiry Report Mental Health Volume 1, No. 95* 30 June 2020 p 92.



'opportunities inherent in school spaces for creating better futures and longer-term positive outcomes for societal mental health.'<sup>32</sup> The Productivity Commission also stated that '[a]ll schools should have dedicated clear strategies... to deliver wellbeing outcomes for their students, in the context of the student's family life and school environment.'<sup>33</sup>

## **Recommendation:**

### **4. Plan infrastructure provision and design to meet sensory needs and enhance wellbeing.**

AFI recommends Universal Design principles are used to provide appropriate sensory environments and design which enhance wellbeing. Research of health facilities in particular has identified evidence to support design elements such as sensory and 'quiet' spaces, and increasing natural light, surfaces and colours.<sup>34</sup> AFI notes this recommendation aligns with *The Future of Education* strategy aim:

- 'Enhance student wellbeing and psychological supports.'<sup>35</sup>

Consideration must be given to providing safe and secure facilities for all students to reduce mental distress, anxiety and experiences of exclusion or trauma. Additionally infrastructure should be designed to be culturally appropriate. AFI emphasises the importance of co-design with people with lived experience and expertise to ensure infrastructure design is appropriate and suitable.

## **All Recommendations:**

- 1. The ACT Government adopt a definition of 'inclusion' consistent with Article 24 and General Comment No. 4.**
- 2. All school infrastructure meets accessibility standards and Universal Design principles.**
- 3. Improved identification and education regarding the use of infrastructure for restrictive practices.**
- 4. Plan infrastructure provision and design to meet sensory needs and enhance wellbeing.**

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<sup>32</sup> Australian Psychologists and Counsellors in Schools (APACS, sub. 419, p. 3) as cited in *Ibid* p 233.

<sup>33</sup> Australian Government Productivity Commission *above* n 31, p 19.

<sup>34</sup> Australian Government Productivity Commission *above* n 31, p 603.

<sup>35</sup> ACT Government, *above* n 7, p 11.