**Submission:**

**Department of Education and Training**

14 October 2015

**Review of the Program for Students with Disabilities**

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**Introduction**

1. The Disability Discrimination Legal Service Inc. ("DDLS") is a state wide independent community legal centre that specialises in disability discrimination legal matters.
2. Our goal is to work towards the eradication of unlawful disability discrimination; and to facilitate and promote justice for people with disabilities. We do this through casework, advice and community legal education to professional and community groups to raise disability awareness and provide information on the *Disability Discrimination Act 1992 (*Cth)and the *Equal Opportunity Act 2010* (Vic).
3. The Department of Education and Training ("DET"), formerly the Department of Education and Early Childhood Development, has been the most common single respondent to discrimination complaints reported to us for many years.
4. The issue of students with disabilities not being able to access their education has been raised for a significant number of years by many different organisations, including the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC"), the Victorian Auditor General's Office ("VAGO"), Office of the Public Advocate ("OPA") and Disability Advocacy Victoria~~.~~
5. It is for this reason, along with the consistent numbers of complaints we receive from parents, that the DDLS strongly supports the review of the Program for Students with Disabilities.
6. Discrimination against students with disabilities leads to poor life outcomes including:
   1. inability to obtain an education;
   2. inability to obtain employment;
   3. inability to obtain functional literacy and numeracy skills, impacting on ability to successfully be included in the community, and high rates of involvement in the juvenile justice system;
   4. poverty;
   5. increased costs for other areas of government.
7. The above should in no way demean the primary reason that students with disabilities should be receiving an education, which is that it is their human right to do so.
8. Until the barriers to accessing their education are removed, many of the extremely serious problems that befall people with disabilities throughout their lives, will remain.

**Program for Students with Disabilities (“PSD”)**

**Outline**

1. Before one is able to properly address how the PSD should be changed, it is important to understand the numerous deficiencies it has.
2. The PSD provides a limited amount of funding, for a limited number of disabilities. Students are allocated a Level of funding, from 1 – 6.
3. At 2015, the levels of funding were set at:

|  |  |
| --- | --- |
| Level 1 | 6,641 |
| Level 2 | 15,358 |
| Level 3 | 24,242 |
| Level 4 | 33,086 |
| Level 5 | 41,863 |
| Level 6 | 50,686 |

1. There is no transparency around how the dollar amount equates to the level.
2. These funding allocations are not provided to the student directly. Instead the funding is provided to the school as part of the Student Resource Package of the school, which is a global funding amount.[[1]](#footnote-1) Hence, whilst the student subject of the application must meet all the essential criteria for a grant, there is no intention or guarantee that the funding (limited as it is) will be dedicated to address the specific needs of the said student. Whilst the idea behind this “global funding”approach may allow required provisions to a student with no or lesser funding allocation and thus appears altruistic, the system is in practice flawed because in most if not every case, the allotted grant of funding hardly suffice for the applicant/child. In some cases, such funding procures the services of an unqualified Teacher’s Aide. However, what often occurs is that the Teacher’s Aide will then not only assist the student with a disability who has secured the funding, but also other students with disabilities whose needs were never part of or considered in securing the initial funding.
3. This is understandably the way schools try and cope with supporting the other thousands of students with disabilities/special needs who are not funded through the PSD[[2]](#footnote-2). Far from being an ideal outcome it has the potential to negate the funding objectives because it means that the student who applied for funding on the basis that they needed certain reasonable adjustments which would require a specific expenditure, is often unable to receive those adjustments as the funding has been reallocated to others through the "sharing" of resources.
4. The use of teacher's aides in the classroom is not evidence base, and is a way in which children with disabilities can be assisted cheaply, as wages for aides are much cheaper than those with higher qualifications, such as teachers, and Special Education Teachers. Some aides may actually prove to be very efficient and effective in their role but in some cases that would be sheer good fortune because in Victoria, there is no qualification required to apply for the job of Teacher’s Aide. While the formal position of schools is that a qualified teacher always supervises the education of a child with a disability, on the other hand their formal position is that Individual Education Plans do not need to be written, reviewed, monitored or evaluated (despite their own policies, procedures and guidelines). Therefore, the student with the most complex needs is often receiving their instructions directly from a person with little or no experience, and no guidance document to work from. This practice is not only unfair to the student but also to the Teacher and the Aide. Unreasonable work expectations may result in substantial and unnecessary stress which eventually compromises their obligations as educators and their rights as employees.

*Recommendations.*

*That the use of Teachers Aides be reviewed with regard to research based evidence on their effectiveness.*

*That a minimum qualification for Teacher Aides that is professionally appropriate for the teaching of children with disabilities be a mandatory requirement for their engagement.*

*That Teachers Aides be required to work pursuant to an Individual Education Plan which physically exists.*

1. How one’s child funding is used is ultimately the decision of the Principal. Therefore the use of funding is ad hoc, and parents are often not told that the funding they may have spent hundreds of dollars procuring through the obtaining of expert reports, may be shared with other children who failed in their funding submissions. The funding may also be used to support salaries of Integration Co-ordinators and other staff, such as class "helpers" who assist the teacher with photocopying and general assistance.
2. Some schools refuse to tell parents how their child’s money is being spent. This lack of transparency is the major cause of confusion for parents and the ensuing break down of their relationship with the head of school. It is very frustrating for many parents who naturally would advocate for their children and in many cases articulate such frustration are labelled as difficult parents. Whist some parents end up being subject to a communication protocol due to the excessive amount of contact from them, the supposed collaboration between parents and school staff in the education of each student is in fact unlikely to happen with parents being uninformed and the school principal withholding vital information for no apparent justification.

*Recommendation. That education authorities be required to advise students/parents as to how PSD funding is being allocated to their child.*

1. Allocations of Level 5 and 6 funding are quite rare, with the majority of students receiving Level 1 and 2 funding in 2005[[3]](#footnote-3) and Levels 2 and 3 in 2012[[4]](#footnote-4).

**Categories & Criteria**

1. The PSD will only consider individual funding for some children who have the following disabilities:

Physical Disability

Visual Impairment

Severe Behaviour Disorder

Hearing Impairment

Intellectual Disability

Autism Spectrum Disorder

Severe Language Disorder with Critical Educational Needs

1. Criteria for each of the above headings have changed at times and are specified below. The eligibility criteria are thus:
2. Criteria for each of the above headings have changed at times and are specified below. The eligibility criteria as at 2015 are thus:

**Physical disability**

A significant physical disability;

**AND/OR**

A significant health impairment;

**AND**

Requires regular paramedical support.

**Visual impairment**

Visual acuity less than 6/60 with

corrected vision;

**OR**

That visual fields are reduced to a

measured arc of less than 10 degrees.

**Hearing impairment**

A bilateral sensori-neural hearing loss that is moderate/severe/profound;

**AND**

The student requires intervention or assistance to communicate.

**Severe behaviour disorder**

Student displays disturbed behaviour

to a point where special support in a

withdrawal group or special class/unit is

required;

**AND**

Student displays behaviour so deviant

and with such frequency and severity

that they require regular psychological

or psychiatric treatment;

**AND**

The severe behaviour cannot be

accounted for by: Intellectual Disability,

Sensory (vision, hearing), Physical

and/or Health issues, Autism Spectrum

Disorder or Severe Language Disorder;

**AND**

A history and evidence of an ongoing

problem with an expectation of

continuation during the school years.

**Intellectual disability**

Sub-average general intellectual

functioning which is demonstrated

by a full-scale score of two standard

deviations or more below the mean

score on a standardised individual test

of general intelligence;

**AND**

Significant deficits in adaptive behaviour

established by a composite score of two

standard deviations or more below the

mean on an approved standardised test

of adaptive behaviour;

**AND**

A history and evidence of an ongoing

problem with an expectation of

continuation during the school years.

**Autism spectrum disorder**

A diagnosis of Autism Spectrum Disorder;

**AND**

Significant deficits in adaptive behaviour established by a composite score of two standard deviations or more below the mean on an approved standardised test of adaptive behaviours;

**AND**

Significant deficits in language skills established by a comprehensive speech pathology assessment demonstrating language skills equivalent to a composite score of two standard deviations or more below the mean.

**Severe Language Disorder with Critical Educational Needs**

A score of three or more standard

deviations below the mean for the

student’s age in expressive and/or

receptive language skills on TWO of the

recommended tests;

**AND**

The severity of the disorder cannot be

accounted for by hearing impairment,

social emotional factors, low intellectual

functioning or cultural factors;

**AND**

A history and evidence of an ongoing

problem with the expectation of

continuation during school years;

**AND**

A non-verbal score not lower than one

standard deviation below the mean on

one comprehensive intellectual test,

with a statistically significant (p<0.05)

difference between verbal (VIQ/VCI)

and non verbal (PIQ/PRI) functioning

(VIQ/VCI< PIQ/PRI);

**AND**

Demonstrated critical educational needs

equating to Program for Students with

Disabilities funding levels three and

above as determined by the validated

results of the Educational Needs

Questionnaire.

1. The above criteria can be found in the Program for Students with Disabilities Guidelines 2015 p5.

1. It should be noted that the criteria for some of the categories are extremely onerous, and therefore ensure that the numbers of students with disabilities receiving funding through the PSD are managed by eligibility/limitation rather than need/inclusion limited. In theory, those who do not meet the criteria are able to receive other services, such as Visiting Teachers or Special Education Teachers, however anecdotal evidence of DET employees and families of children with disabilities, these services have also been cut over the years and are extremely difficult to procure[[5]](#footnote-5). Parents have received letters from schools advising them that due to not qualifying for funding, they are not eligible to receive any services.
2. It should be clear that the current criteria allow entry to the PSD according to disability, rather than need. This is what makes the program essentially flawed and systemically inequitable. It ignores the obvious fact that the applicants are individual children, yet to develop the ability to manage the symptoms of their disabilities in a social and school environment. These children spend at least 1/3 of their active life at school, yet have diagnosis substantially impair their capacity to participate in the curriculum. At the same time they many do not meet the eligibility criteria but have imposed upon them the same academic load and norms of classroom behaviour.
3. In relation to the Educational Needs Questionnaire, which is the PSD tool by which in theory a dollar amount is decided upon by DET for the student, it is also a tool whereby a student has to prove disability type and deficit rather than what is needed to equip them in an academic, social , physical and sensory educational interaction.
4. DET have been aware of the limitations of the Educational Needs Questionnaire since 2007, and despite that have made few changes.
5. In *Turner v State of Victoria[[6]](#footnote-6)* Deputy President Mackenzie concluded:

*The form of the ENQ as it was then and is now is very similar. It is divided into twelve areas – mobility, fine motor skills, receptive communication, expressive communication, challenging (excess) behaviour, frequency, safety, hearing, vision, self-care, medical and cognitive. There is a rating scale for each area, and the relevant rating number is to be filled in. The rating scales for the various areas are not the same. For example, receptive communication is rated on a scale from one to six, with one being ‘comprehends conversational speech’ and six being ‘no comprehension of verbal, visual or gestural communication’. Expressive communication is rated on a scale of one to seven, with one being ‘age-appropriate’ and seven being ‘no expressive communication’. I agree with Dr Farrelly’s oral evidence that the ENQ is a ‘rudimentary tool’, because its rating scales are too broad and non-specific. I agree with Professor Reilly’s evidence that the rating scales look, for the most part (although not exclusively) at the degree of severity of the disability and physical limitations imposed by it (for example how much that student communicates or is mobile) rather than the effect of those limitations on education or in the classroom or what is needed by that student to function effectively in the educational environment or in the classroom. In these respects, the ENQ is not a good indicator of educational need.* [512]

1. It is disappointing that despite Tribunal findings and the evidence of experts that DET procedures in this regard remain the same.

*Recommendations.*

*That all educational authorities are required to offer allied health services to all students with disabilities whose individual needs require such assistance, whether or not they receive individualised funding. These services should not be required to be provided by direct employees of DET.*

*That the criteria for deciding which students receive funding is one based on individual education need, rather than disability.*

**Disabilities Not Catered For**

1. The seven disability categories are more interesting for what they leave out. Students with the following disabilities do not qualify for funding through the PSD:

Acquired Brain Injury

Attention Deficit Hyperactivity Disorder (“ADHD”)

Learning Disorder

Dyslexia

Psychiatric Illness

Multiple disabilities where one of the disabilities is not severe enough to meet any one criteria

Any one disability that is named above, but does not have the severity of symptoms to meet the PSD criteria

Other - there are a multitude of different disabilities that are less common than those mentioned. If they do not fit into the criteria, they are not funded.

1. The DET claim that PSD funding is not the only way that children with disabilities are supported in schools financially. However the reality is that schools are limiting attendance of children with disabilities due to lack of funding and cannot afford to take money out of their budgets to provide support.
2. An example is that a child with dyslexia and ADHD may require:
   1. an extra staff person to assist them in staying on task;
   2. specialist training for their teachers;
   3. an individual program, which may require particular evidence based programs be purchased;
   4. Just a full-time aide costs between $40,000 and $50,000 in salary per annum. This money is not found in the regular school budget and presupposes that there is only one unfunded child who requires extra assistance in one school. If there are two in different grades that could be $80,000 per annum needing to be spent on only two children. Judging from the number of complaints received, it is likely that many schools may have between 5 and 30 unfunded children with disabilities. It is not viable for schools to find $30,000-$600,000 annually from their budget, and it does not occur.[[7]](#footnote-7)

1. Dyslexia is a good example of a disability where serious consequences will occur if intensive assistance is not provided. A 2010 report to the Parliamentary Secretary for Disabilities and Children's Services from the Dyslexia Working Party[[8]](#footnote-8) outlines these consequences and urges the government to implement a number of proposals to address the learning needs of children with this disability. In the meantime, in Victoria, one cannot even apply for funding for dyslexia – it is not on the list of acceptable criteria. It is therefore unsurprising that despite being a well developed country, Australian levels of literacy are extremely poor, particularly so for children with disabilities. Dyslexia is the primary cause of learning difficulties and literacy.
2. Almost half of Australian adults do not have the basic reading and writing skills needed for everyday living, have difficulty finding information in newspapers, using a bus timetable or understanding directions on medicine labels. The Australian Bureau of Statistics adult literacy and life skills survey found the worst literacy problems were in school leavers aged 15 to 19. The survey tested nearly 9000 people aged between 15 and 74 on their ability to deal with the literacy demands of everyday life. 46 - 70% of Australian adults had poor or very poor skills across one or more areas of literacy. They had not attained the level of literacy skills regarded as the minimum required to cope with modern life.[[9]](#footnote-9)
3. The PSD can be seen to be discriminatory through its ‘picking and choosing’ of some disabilities and not others.

**Lack of Policies and Best Practice governing Service Provision**

1. Within the PSD, and/or the DET itself, there are no detailed policies governing best practice in respect of service provision to children with particular disabilities. Accordingly, principals of schools are able to individually decide what is best practice service provision, despite having little or no knowledge about disabilities.

1. There has been a misleading claim by the DET for some years now that its eligibility criteria for the PSD is developed from the World Health Organisation definitions of disabilities.[[10]](#footnote-10) This is false but continues to be written in DET literature. In fact, the World Health Organisation (“**WHO**”) does not have its own definitions per se, but refers to the ICD-10 (International Statistical Classification of Diseases and Related Health Problems 10th Revision) which is simply a diagnostic manual. Moreover, the PSD criteria have very little in common with the ICD-10 classifications.
2. The ICD-10 gives users an etiologicalframework for the classification, by diagnosis, of diseases, disorders and otherhealth conditions. The focus here is on mortality and the physical aspects of any disease. WHO states the ICD 10 should be used mainly to classify causes of death; which makes the using of it as an initial assessment tool nonsensical – if one were to accept that it has been used by the DET, which it has not.
3. An example of how the PSD criteria are far removed from the ICD-10 is the PSD’s severe language disorder category, which requires a disorder to be 3 standard deviations from the mean. Such a high standard deviation is not reflected in the ICD-10, and in fact experts have given evidence in Australian courts that the DET’s criteria are completely out of step with domestic and international norms. Despite such evidence, and a legal finding against the DET which highlights this anomaly, the DET has continued to publish this false claim[[11]](#footnote-11).
4. When pushed to explain their claims, the DET has formally advised parents that their criteria is based on the International Classification of Functioning (“ICF”). This again is false. ICF is WHO's framework for health and disability. It provides a universal classification for functioning and disabilityassociated with health conditions. It was designed for use in health and health related sectors, forming the conceptual basis for the definition, measurement and policy formulations for health and disability.
5. The ICF is a flexible framework which relies on a range of matters to inform responses to people with disabilities/illness. In direct opposition, the PSD’s rigid criteria must be met by children **prior** to any discussions taking place in relation to support which relies on funding through the PSD.
6. WHO states that the ICF is to be used in combination with the ICD -*Pg 3 “Towards a Common Language for Functioning, Disability and Health ICF”,* and that failure to meet the criteria of one should not discount the use of the other. The use of both, regardless of an existing medical diagnosis, is encouraged by WHO as it creates a broader and more meaningful picture of the experience of health of individuals and populations.
7. The purpose of the ICF is to remove the labelling of a disability, however the DET requirement of children with disabilities to meet a fabricated disability category with supporting evidence defeats the purpose of the ICF.
8. PSD literature should not be misleading Victorian public.

**Deaf Education**

1. Currently, there is no legislative right for a deaf student to have access to the curriculum in their native sign language, which in Australia, is Auslan. This omission in itself breaches the *International Covenant on Economic, Social and Cultural Rights*, articles 13 and 2(2); *Convention on the Rights of the Child*, article 2(1), and the *UN Convention of the Rights of Persons with Disabilities* article 21.
2. In *Beasley v State of Victoria[[12]](#footnote-12)* it was revealed in evidence from DET that throughout the many Victorian schools which were either schools for the deaf, or had deaf units/facilities, the Principal had the responsibility of making a decision on which sign language or sign system was used. This was regardless of any expertise or knowledge that the Principal may have about the deaf community and its language. There is only one recognised sign language in Australia, which is Auslan (Australian Sign Language).
3. *Beasley v State of Victoria* revealed that the school in question, Pearcedale Primary School, had decided as an official position to use what they called ‘Sign Supported English’, which was part Auslan but was used in English word order. In other words it was not a language, simply a sign system someone had made up. During the hearing, academics and experts criticised the use of this ‘system’ and supported the right of deaf people to access their native language. The complainant, Dylan Beasley, was a fluent Auslan user from a deaf family who used Auslan, so the logical sign language would have been Auslan. Despite Beasley being successful, the DET has not implemented a policy enshrining the rights of deaf students to access their education in Auslan, and continues to allow schools individually to make decisions about the sign language or sign system to be used – despite the Federal Government only recognising one sign language in Australia.
4. In addition, parents making enquiries in relation to the education of their deaf children continue to be told that schools do not have the funding to pay for full time interpreting for a deaf student.

1. There is no relationship between academics who specialise in the area of deaf education and the DET, and in fact approaches made to the DET by these experts have been ignored.

1. During the hearing in *Beasley,* it was noted that there had been a review of deaf education by the DET, but none of its recommendations had been enacted upon. Reviews continue.

*Recommendation. That the right to an Auslan interpreter for deaf students is enshrined in DET policy.*

**Students with Language Disorders**

1. In relation to the section below on students with language disorders, there are a number of eminent Speech Pathologists who are academics in leading Universities in Victoria who have been critical of the support to students with language disorders, as has the professional peak body for speech pathologists, Speech Pathology Australia. Despite this wealth of knowledge being held locally, no attempts have been made by DET to accept the advice of eminent professionals in this field.
2. Speech Pathologists working directly for the DET are prevented from working using best practice methods due to workforce issues and funding restrictions.

*Recommendation. That the Standards require educational authorities to develop policies and procedures in relation to the delivery of education to students with language disorders in collaboration with Speech Pathology Australia.*

**Autism Spectrum Disorder (“ASD”)**

1. Positive behavioural support and best practice in behaviour management of children with ASD is set aside in many autistic schools in favour of old-fashioned and illegal methods such as isolation and physical and chemical restraint.

*Recommendations.*

*That there are mandated policies and procedures in relation to the delivery of education to students with Autism Spectrum Disorder that reflect evidence-based research and best practice.*

*That the recommendations of VEOHRC in their 2012 report "Held Back-the Experiences of Students with Disabilities in Victorian Schools" in relation to restrictive practices be immediately accepted and implemented.*

**Remedial literacy and numeracy**

1. DET makes no distinction between evidence-based literacy and numeracy programs, and ‘teacher created’ literacy and numeracy programs. No matter what the severity of academic delay, the severity of a learning disability, or a student’s potential, DET routinely respond with the same literacy and numeracy programs despite little evidence of their success, and/or despite little evidence of a child’s progress.
2. There are a number of evidence-based programs available, but we infer that due to the intensity of teaching required to implement those, they are largely rejected by schools. For example Dyslexia, a disability that does not include intellectual disability but severely affects the ability to learn, does not attract individual funding. Therefore, evidence-based programs which require one-to-one intensive instruction are not used. They are rejected by virtue of the fact that they will require significant resourcing.

*Recommendation: That DET require evidence-based teaching practices and programs to be used in the teaching of students with disabilities.*

**General - Attitude/Culture**

1. In discrimination complaints lodged against DET, all of the complainants have a range of medical reports to support their requirements to have their individual needs met. Most of these reports include opinions from that student’s independent medical practitioners. In spite of the weight of such material, the recommendations contained in the reports are routinely not accepted by DET. Instead DET spends valuable resources in attempting to discredit these experts and their diagnosis and recommendations in the event of a complaint against it. Consequently, there is a huge difference in the supporting measures, if any, DET implements to assist a student, when compared to those that have been recommended by that student’s medical practitioners.
2. DET systematically reject the recommendations of practitioners who have treated the student over some time, when the DET itself allegedly has very limited resources to devote to developing support plans that are appropriate to each individual child’s needs. It is particularly curious that the DET has no policies requiring that a disability be addressed in a certain way, that a particular method of teaching be employed, or that specific professional people should be contacted (eg recommendations that behaviour analysts or behavioural psychologists should develop Positive Behaviour Plans rather than general teachers).
3. While the DET employs a minimal number of psychologists and speech pathologists, their services are mostly used for assessment for eligibility to the PSD rather than treatment, they do not tend to specialise in a particular area, and long waiting lists can and do apply. While some families can afford private practitioner assistance, many cannot. In any event, disabilities that affect a child's access to education require programming, planning and therapy in the educational setting rather than, or in addition to, outside it. Intensive assistance is not provided by DET allied health professionals. Many parents have been advised that no direct assistance is available.
4. As more litigation occurs involving different external professionals, the number of these professionals disenfranchised with the treatment of students with disabilities in Victoria grows.
5. Internal DET procedures and guidelines are being discarded as families actually call DET to account in relation to the following of its own protocols relating to the provision of reasonable adjustments. Individual Education Plans, the basic backbone of designing individual education supports for children with disabilities, are rejected by teachers who when called upon to produce them, reject their necessity. Behaviour Support Plans, to address behavioural challenges of children with disabilities, are drawn up by teachers whose expertise relegates such plans to "zero tolerance" or a list of punishments for non-compliance. Parents who ask for behavioural psychologists or behaviour analysts to assist in the development of such plans are in the main refused such assistance.
6. DET psychologists are controlled by internal policies, procedures, and workforce shortages which do not allow them to put in place the required therapies and support . Consultation with professionals also mentioned in DET documents[[13]](#footnote-13) as important in the support of children with disabilities, is being rejected by teachers, who claim that they have the necessary expertise in a variety of disabilities, and are not required to consult other advisors. So, in practice the DET is abandoning its own policies and procedures and instead is investing much of its efforts and resources in defending its failure to successfully provide education to students with disabilities in the courts.

**Students with a Language Disorder**

Change to the Criteria

1. In 2005, DET instituted certain changes to the PSD. As a result of this, students with a severe language disorder would only be provided with funding for support if their disorder could be categorised as falling three or more standard deviations below the mean.[[14]](#footnote-14) This is not the only criteria to be met, but the most overarching criteria.
2. Prior to the 2005 changes, which were implemented in 2006, support was available for students with a disorder that placed students two or more standard deviations below the mean in the relevant areas.[[15]](#footnote-15) These changes resulted in funding being discontinued in respect of 6,500 Victorian students and, as noted by Speech Pathology Australia in its report on the changes, had the effect of limiting funding to fewer than 0.1% of the student population.[[16]](#footnote-16)
3. The DDLS asserts that the review which led to this change was improper. It bases this assertion on the following facts:
   1. the review was conducted by the Royal Children’s Hospital “Education Institute”;
   2. the Education Institute is funded almost entirely by the DET;
   3. DET members were on the Education Institute’s board, indeed the Education Institute’s CEO was an ex DET employee;
   4. the independent and senior Speech Pathologist involved in the review objected strongly to the change, and was ignored.
4. As a result of this “review”, the standard deviation was raised and the words “Critical Educational Need” were added to the criteria. This phrase is not defined in any DET material, and therefore it is impossible to know how it can be met. As a result of this criteria, thousands of students who have a clinically severe language disorder do not meet the contrived definition set by DET.
5. Immediately upon implementation of the new criteria, students eligible for PSD funding dropped from 6,760 in 2005 to 208 in 2006. That is, approximately 90% of students lost their funding. The status quo remains in 2015.

Substitute ‘Language Support Program**’**

1. Predictably, the change of criteria and consequent loss of funding to approximately 6,500 students resulted in a massive protest from parents, professionals and disability organisations.
2. To placate these groups and individuals, DET announced a Language Support Program. DET proposed that this would result in teachers being taught how to work with students with oral language difficulties. The purpose of the new program was contradicted by the following facts:
   1. No Speech Pathologists were involved in the reference group that was established to implement the new program.
   2. The new program was voluntary.
   3. The program did not provide training on how to work effectively with students with severe language disorders, and did not provide for any extra resources such as extra staff in the classroom or speech therapy.
   4. The funding available in this program was allocated to schools based on their geographic location, rather than how many students with language disorders attended each school.
   5. The funding, although labelled by the DET as “language disorder” funding, is in fact not required to be spent on students with language disorders at all – it is simply part of a school’s global funding package.
   6. The program is only targeted at children with oral language difficulties.
   7. There is no requirement that schools account for this money.
3. It is hard to understand why one of the DET bureaucrats, Mr Ian Claridge, who oversaw the restriction to students receiving individual support for severe language disorders is named as a “critical friend” in this current review. It does not instill confidence.

**Students requiring Alternative and Augmentative Communication (“AAC”)**

1. Despite the rights of people with complex communication needs to AAC being enshrined in the UN *Convention on the Rights of Persons with Disability*, there is no such right in Victorian schools. There is no right to have access to the equipment required to assist a student to access their education, and if the parents pay for such equipment, there is no right to the one-to-one assistance and training required to use the equipment.
2. One of the major barriers to an individual not being able to learn is them being denied functional communication.
3. The ability to communicate affects the most fundamental aspects of a person's life. Education, socialisation, decision-making, safety, employment and personal relationships are unattainable or difficult if one cannot communicate. The most basic human rights as set out in legislation such as the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and International Covenant on Civil and Political Rights uphold a person’s rights to communicate.
4. The right of an individual to communicate through augmentative and alternative means is not a commitment from DET. One would assume that all students would be given a means to communicate as part of ensuring they have access to their education, but for children with moderate to severe disabilities, and those who are deaf, this is not the case.
5. Many students within Special Schools and Special Development Schools have no functional means to communicate and hence no means to access her education, or more importantly, report restrictive practices. While this problem is also evident in mainstream schools, special schools are less likely to provide individualised programs as they have staff ratios of approximately 2 staff to eight children, and therefore there is less opportunity for individual assistance. In addition, special schools tend to provide “group” therapies through their practitioners, and there is a dearth of best practice communication plans in place for students with communication needs.
6. There seems to be no base line requirement within the education sector for those who attend schools or day programs to have a communication assessment and a means to communicate. Further, if a child does have a means to communicate, there are no obligations for schools to ensure the appropriate equipment is provided, staff are trained in the use of that equipment, and the equipment is consistently used, other than that student’ s rights under discrimination legislation.
7. People with disabilities should not have to litigate to communicate.

**Impact of the changes**

1. The policy encapsulated in the PSDrestricts the access of children with a language disorder not only to education at both the primary and secondary levels, but also at the tertiary level. This is due to the flow-on effect that is experienced as a result of these children failing to meet educational outcomes at earlier stages.
2. No other category in the PSD requires a disability to be 3 standard deviations from the mean to enable extra resources to be allocated to a student. This strict criteria is not replicated in any other state in Australia to our knowledge.
3. A number of students with language disorders have lodged discrimination complaints against DET in relation to their inability to access the required supports, and their subsequent academic failure and distress.
4. The Speech Pathology Australia Briefing Paper, ‘*Students with Severe Language Disorder in Victorian Government Schools* (2006)’ was given to the Minister for Education at the time in an attempt to apprise her of the risks inherent in not providing children with language disorders appropriate assistance. Speech Pathology Australia’s advice was ignored by the Minister, as was the advice of any speech pathologist and disability group. A greater group of children are now at risk of mental health issues and involvement in the juvenile justice system as a result.
5. In many cases, the policy simply renders any meaningful access to education impossible for children with severe language disorders. On this basis, the policy manifestly discriminates against children with a language disorder and, accordingly, amounts to an infringement of Australia’s obligation at international law to ensure that education is accessible to all on a non-discriminatory basis.[[17]](#footnote-17) It is also in breach of Australia’s affirmative obligation under Art 23(2) of the *Convention of the Rights of the Child* to extend “assistance for which application is made and which is appropriate to the child's condition”, of which one aim is “to ensure that the disabled child has effective access to and receives education”.[[18]](#footnote-18)
6. The policy further runs counter to the spirit of the *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*), which at Article 13 (1) states that education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society".
7. The ramifications of the operation of the PSDare grave. As Speech Pathology Australia observed in its report, empirical research clearly demonstrates that a deviation of only 1.5 standard deviations below the mean is the threshold beyond which there is high risk of long-term negative outcomes associated with not attaining a minimum level of educational achievement, including psychiatric illness and unemployment.[[19]](#footnote-19)
8. The PSD therefore places a large number of students (at least over 6,000) whose language disorder places them between 2 and 3 deviations below the mean at high risk of these outcomes. The likelihood that a bar on access to education will have broad-ranging negative social consequences such as these is widely recognised, and was specifically contemplated by the Committee on Economic, Social and Cultural Rights (‘CESCR’) in its comment on art 13 in which it stated:

‘*As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.’*[[20]](#footnote-20)

**Changes to the Autism Spectrum Disorder Category**

1. It was disappointing to see DET target children with Autism Spectrum Disorder (“ASD”) by making the criteria more difficult to meet in September 2009. DET, having been roundly criticised due to its changes to the language disorder program, went about this exclusion in a different way. A new guidance note [[21]](#footnote-21)was sent out for speech pathologists advising them on future requirements for children to meet the criteria. The guidance note raised the bar for the diagnosis of pragmatic language disorders, and as a result and continuing today, many children who previously met the criteria for ASD, presently do not do so.
2. This most recent change angered and shocked not only speech pathologists, children and their families, but also school staff who have contacted us for advice.
3. The change was made, again, without consultation with Speech Pathology Australia, and reflects yet another DET strategy to exclude children from appropriate funding. Sadly, it seems that the DET is putting considerable effort into deciding how to restrict the amount that is spent on students with disabilities rather than devoting such resources to the areas which need it most. This is not an appropriate response to the improved diagnosis of disabilities or the increase in children with particular disabilities. An increasing number of parents have contacted us in relation to their children not being able to receive funding due to not meeting the new Autism Spectrum Disorder criteria for funding.
4. From observation in recent years, when the numbers of students receiving PSD funding significantly rises, DET then responds by devising a way in which they can be excluded from the program.

**Restrictive Practices against Students with Disabilities in Schools**

1. The VEOHRC report entitled *Held Back: the experiences of Students with Disabilities in Victorian schools.[[22]](#footnote-22)* Chapter 10 highlights abuses of students with disabilities in schools through restraint and seclusion, and clearly sets out the breaches of domestic and international law that are raised by such abuses. Despite recommendations by VEOHRC on what needs to be done to protect children in schools from these practices, the Department Of Education and Training have not acted. Both VEOHRC and the Office of the Public Advocate have recommended that the DET prohibit the seclusion of students with disabilities – VEOHRC in the aforementioned report[[23]](#footnote-23) and the Office of the Public Advocate through a position paper[[24]](#footnote-24). The Department Of Education and Training have not prohibited seclusion.
2. The Department Of Education and Training continues not to alter its Restraint Policy in response to recommendations from VEOHRC[[25]](#footnote-25).
3. DDLS attaches a submission on the Commonwealth's Draft *Proposed* *National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector* which sets out the disturbing nature of the DET Restraint Policy.
4. Students with disabilities cannot learn when they are in seclusion, and/or being traumatised through physical restraint. The recent appointment of the Principal Practice Leader does nothing in the short term to protect students with disabilities from these practices.

**Failure to require outcomes from monies spent**

1. As pointed out by VAGO, DET spends millions of dollars on the Program for Students with Disabilities but does not have the information it needs to determine whether PSD funding is being used efficiently and effectively.[[26]](#footnote-26) There are not many organisations who would be willing to spend such large amounts of money without requiring measurable outputs.
2. This failure to require accountability begins at the level whereby students with disabilities are (or should be) receiving Individual Education Plans with measurable outcomes. The formal DET position is that Individual Education Plans do not need to physically exist (as set out in case law) and therefore any measurable outcomes do not exist either.

*Recommendation: DET instigate mandatory training for teachers on how to develop, monitor and evaluate Individual Education Plans including measurable outcomes.*

**Summary of How the PSD Currently Disallows Access to Education**

1. The PSD disallows students with disabilities who have mild, moderate and severe disabilities from accessing individual funding through its rigid criteria.
2. The PSD allocates money through the articulation of disability and what a child cannot do, rather than their individual needs. As a result, thousands of children with disabilities are missing out on assistance.
3. There are no mandatory policies, procedures and guidelines around the support of students with disabilities (except, ironically, for the PSD application process). As a consequence, teachers who are having such sufficient difficulties teaching for the Minister to be holding a review of education in general, are also expected to make decisions on an ad hoc basis about what should be done to educate those students with no guidance. The secondary consequence is a failure to provide best practice evidence-based teaching approaches and programs. The lack of outcomes is referred to in paragraph 28 above.
4. DET culture is that there is greater priority attached to budget control then there is about ensuring that students with disabilities can access their education.
5. There is no requirement for measures taken under the PSD, or in the teaching of students with disabilities in general, to be effective.
6. There is no requirement to ensure that students with disabilities have an effective means of communication.

**Recommendations**

1. *That the use of Teachers Aides be reviewed with regard to research based evidence on their effectiveness.*
2. *That a minimum qualification for Teacher Aides that is professionally appropriate for the teaching of children with disabilities be a mandatory requirement for their engagement.*
3. *That Teachers Aides are required to work pursuant to an Individual Education Plan which physically exists.*
4. *That DET are required to offer allied health services to all students with disabilities whose individual needs require such assistance, whether or not they receive individualised funding. These services should not be required to be provided by direct employees of DET.*
5. *That the right to an Auslan interpreter for deaf students is enshrined in DET policy.*
6. *That DET develop mandated policies and procedures in relation to the delivery of education to students with language disorders in collaboration with Speech Pathology Australia.*
7. *That there are mandated policies and procedures in relation to the delivery of education to students with Autism Spectrum Disorder that reflect evidence-based research and best practice.*
8. *That the recommendations of VEOHRC in their 2012 report "Held Back-the Experiences of Students with Disabilities in Victorian Schools" in relation to restrictive practices be immediately accepted and implemented.*
9. *That DET instigate mandatory training for teachers on how to develop, monitor and evaluate Individual Education Plans including measurable outcomes.*
10. *That DET policies, procedures and guidelines relating to students with disabilities become mandatory rather than optional.*
11. *That the criteria for deciding which students receive funding is one based on individual education need, rather than disability.*
12. *That the Student Support Group be charged with the decisions as to determining the child's individual educational needs.*
    1. *The reference to the Student Support Group should be seen to be a reference to the DET Student Support Group as described in the Guidelines, rather than how Student Support Group are operating currently.*
    2. *The Student Support Group should initially, and as a matter of priority, include the students treating practitioner/s.*
    3. *There be no veto power from the Principal to overturn the decisions of the Student Support Group.*
    4. *Allied health practitioners employed by DET should not be the sole practitioners involved in the Student Support Group due to their conflict of interest.*
    5. *Allied health practitioners employed by DET will no longer need to spend most of their time writing diagnostic reports for the PSD if this model changes.*
13. *DET begin long-term planning for the elimination of special schools, in line with the recommendations and findings of international research.*

1. Program for Students with Disability Guidelines 2010, p. 19 [↑](#footnote-ref-1)
2. 18.5% of Australians have a disability-Australian Bureau of Statistics [↑](#footnote-ref-2)
3. *Report of the Ministerial Working Group Program for Students with Disabilities April 2005*,p. 29 [↑](#footnote-ref-3)
4. "*Programs for Students with Special Learning Needs*" 2012 Victorian Auditor General's Office [↑](#footnote-ref-4)
5. "Held Back-the Experiences of Students with Disabilities in Victorian Schools" Victorian Equal Opportunity and Human Rights Commission p 60 [↑](#footnote-ref-5)
6. Turner v Department of Education and Training (Anti Discrimination) [2007] VCAT 873 [↑](#footnote-ref-6)
7. DDLS is not recommending Teachers Aides as a suitable response to the requirement for assistance for students with disabilities, but this currently seems to be the standard way by which DET respond to students with disabilities. [↑](#footnote-ref-7)
8. "Helping people with dyslexia: a national action agenda" Report to the Hon Bill Shorten, Parliamentary Sec to Disabilities and Children's Services. 10 January 2010 [↑](#footnote-ref-8)
9. Australian Bureau of Statistics. (2008). [↑](#footnote-ref-9)
10. Program for Students with Disability Guidelines 2015 page 5 [↑](#footnote-ref-10)
11. Turner v State of Victoria (VCAT 2007) VCAT 873 [↑](#footnote-ref-11)
12. *[2006] VCAT 187*  [↑](#footnote-ref-12)
13. Program for Students with Disabilities Handbook [↑](#footnote-ref-13)
14. DET *Program for Students with Disabilities 2006*, Language Disorder Program Handbook Page 11

    Program Students with Disabilities Handbook 2015 p 6 [↑](#footnote-ref-14)
15. DET *Program for Students with Disabilities Handbook* 2005 p 12 [↑](#footnote-ref-15)
16. Speech Pathology Australia, *Briefing Paper: Students with Severe Language Disorder in Victorian Government Schools* (2006), p. 1. [↑](#footnote-ref-16)
17. *International Covenant on Economic, Social and Cultural Rights*, arts 13 and 2(2); *Convention on the Rights of the Child*, art 2(1). [↑](#footnote-ref-17)
18. Note that while this obligation is made “subject to available resources”, the obligation to provide education free of discrimination is not conditioned in this way: see note and accompanying text. [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. Committee on Economic, Social and Cultural Rights, *Implementation of the* International Covenant on Economic, Social and Cultural Rights*:* *General Comment No. 13 – The Right to Education* (E/C.12/1999/10), 8 December 1999, para 31. [↑](#footnote-ref-20)
21. "Program for Students with Disabilities-Autism Spectrum Disorder, Supplementary Guidelines for Speech Pathologists-Pragmatic Language [↑](#footnote-ref-21)
22. http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/184-held-back-the-experiences-of-students-with-disabilities-in-victorian-schools-sep-2012 [↑](#footnote-ref-22)
23. ‘Held Back’ p 124 [↑](#footnote-ref-23)
24. ‘Restrictive Interventions in School Settings’ March 2013 [↑](#footnote-ref-24)
25. ‘Held Back’ p 124 [↑](#footnote-ref-25)
26. "Programs for students with special learning needs" 2012 VAGO pviii [↑](#footnote-ref-26)