**Submission:**

 **Senate Education and Employment Committees**

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**Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support**

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**Introduction**

1. The Disability Discrimination Legal Service Inc ("DDLS") is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with a disability, and to generally promote equality for those with a disability.
2. DDLS statistics reflect that for the six year period ending 18 August 2015, the organisation received a request for legal advice at least once per week in relation to education matters. Assuming that prior to parents contacting a law firm for legal advice they have exhausted all other non-legal complaints alternatives, we view these figures as reflecting significant dissatisfaction with the education system.
3. By disability, the disability most frequently the subject of advice was Autism Spectrum Disorder, followed by Intellectual Disability, Specific Learning Disability, Psychiatric, Physical, Not Stated, Neurological (including Epilepsy), other Disability, Developmental Delay, Acquired Brain Injury, Hearing Loss, Vision Loss, Blood-Borne Diseases, Speech.
4. The most common single Respondent to discrimination queries overall in the six year period, was the Department of Education and Training (”DET”).
5. Both the Victorian Equal Opportunity and Human Rights Commission and the Victorian Auditor General's Office in 2012 have reported on the barriers to students with disabilities receiving an education.[[1]](#footnote-1) There have been no discernible changes to the provision of education to students with disabilities in Victoria since that time.
6. DDLS supports the findings and recommendations in these reports, except for the recommendations DET "review" various practices/policies. While we believe that the statutory authorities assumed optimistically that a "review" of a certain policy and procedure may lead to improvement or change, unfortunately this has not been the case.

**Funding for Students with Disabilities**

1. One of the most integral elements of ensuring access to education for students with disabilities is to provide the funding, resources and training to schools to allow them to meet the individual needs of their students, in the manner required.
2. DDLS rejects the notion (as do schools themselves) that schools are able to meet these individual needs without additional resources to do so. While it is not always necessary for money to be spent to meet the needs of every child with a disability, for many students, it is required in order to provide reasonable adjustments.
3. In Victoria, funding is provided to schools through the Program for Students with Disabilities, which is a program that has attracted criticism for many years, and is currently under review by the Minister for Education.
4. It should be noted that the incoming government made a commitment as part of its election platform on education to review this program, the review is not an initiative of DET.

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

**Outline**

1. The PSD provides a limited amount of funding, for a limited number of disabilities. Students are allocated a Level of funding, from 1 – 6.

In 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 $ 46,198[[2]](#footnote-2)

1. These funding allocations are not provided to the student directly. Instead the funding is provided to the school as part of their Student Resource Package, which is a global funding amount.[[3]](#footnote-3) In many cases, such funding procures the services of an unqualified Teacher’s Aide, despite the fact that there is no evidence that Teachers Aides improve educational outcomes for students[[4]](#footnote-4). Indeed, what often occurs when that person is recruited, is that they will then not only assist the student with a disability who has secured the funding, but will often assist other students with disabilities who did not qualify for funding, but need support.

1. This is understandably the way schools try and cope with supporting the thousands of students with disabilities/special needs who are not funded through the PSD. However this is hardly an ideal outcome. It means that the student who applied for funding on the basis that they needed certain reasonable adjustments that would require a specific expenditure, is often unable to receive those adjustments as the funding has been “shared” with others.
2. The use of teacher's aides in the classroom is a way in which children with disabilities can be assisted more economically as wages for aides are much cheaper than those with higher qualifications, such as teachers and Special Education Teachers. In Victoria, there is no qualification required to apply for the job of Teacher’s Aide. While the formal position of DET is that a qualified teacher always supervises the education of a child with a disability, their other 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.
	1. How one child's funding is used is ultimately the decision of the Principal, regardless of that individuals lack of disability expertise. Therefore the use of funding is ad hoc. Parents are often unaware 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 own 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.
	3. Allocations of Level 5 and 6 funding are quite rare, with the majority of students receiving Level 1 and 2 funding[[5]](#footnote-5).

 **Categories & Criteria**

1. The PSD will only consider individual funding for the following disabilities:

Physical Disability

Visual Impairment

Severe Behaviour Disorder

Hearing Impairment

Intellectual Disability

Autism Spectrum Disorder (“ASD”)

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 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.
2. It should be noted that the criteria for some of the categories are extremely onerous, and therefore are quite effective in ensuring the numbers of students with disabilities receiving funding through the PSD are 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 according to DET employees and families of children with disabilities, these services have also been cut over the years and are extremely difficult to access. Parents have received letters from schools advising them that due to not qualifying for funding, they are not eligible to receive any services.

 **Disabilities Not Catered For**

1. The seven disability categories are more interesting for those disabilities not included. Students with the disabilities below do not qualify for funding through the PSD:
	1. Acquired Brain Injury
	2. Attention Deficit Hyperactivity Disorder (“ADHD”)
	3. Learning Disorder
	4. Dyslexia
	5. Psychiatric Illness
	6. Multiple disabilities where one of the disabilities is not severe enough to meet any one criteria
	7. Any one disability that is named above, but does not have the severity of symptoms to meet the PSD criteria
	8. 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.
2. 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.
3. An example of requirements for funding, when none is available, 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 that particular evidence based programs be purchased.
4. The wages of a full-time aide (putting aside their ineffective nature, but recognising currently say reflect the standard support choice of schools) would cost 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 $80-90,000 per annum spent on only two children. Judging from the number of parent complaints, it is likely that many schools may have between 5 and 50 unfunded children with disabilities, depending on the size of their school. It is not viable for schools to find $30,000-$600,000 annually from their budget.
5. Dyslexia is a good example of a disability where serious consequences can occur if intensive assistance is not provided. A report to the Parliamentary Secretary for Disabilities and Children's Services from the Dyslexia Working Party[[6]](#footnote-6) 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.
6. 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 Statistic's 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.[[7]](#footnote-7)

**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 of 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.[[8]](#footnote-8) 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[[9]](#footnote-9).
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 completely 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. Any policies/procedures published by DET, when challenged, have been represented as optional, therefore for all intents and purposes, they achieve nothing.

**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 (Australian Sign Language). 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 [2006] VCAT 187*  it was revealed in evidence from the 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 knowledge that the Principal may have about the deaf community and its 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 contrived. 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.
4. 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.

1. 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.
2. There is no relationship between academics who specialise in the area of deaf education and DET, and in fact approaches made to the DET by these experts are ignored. Curiously, despite millions of dollars being spent on establishing and running the Victorian Deaf Education Institute, the Institute has had no influence on guaranteeing the basic human right of Deaf students to their native language.
3. During the hearing in *Beasley,* it was noted that there had been a review of deaf education by DET, but none of its recommendations had been enacted upon. Reviews continue.

**Language Disorders**

1. There are no policies and procedures required to be followed for students with language disorders in Victorian schools.

**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 restrictive practices such as seclusion and physical and chemical restraint.
2. There are no policies to give guidance around seclusion, or to prohibit it.
3. The DET Restraint Policy is so broad as to be dangerous to the health of students with disabilities.[[10]](#footnote-10)

**Remedial Literacy and Numeracy**

1. DET makes no distinction between evidence-based literacy and numeracy programs, and commonly available literacy and numeracy programs. No matter what the severity of academic delay, the severity of a learning disability, or a student’s potential, schools routinely respond with informal literacy and numeracy programs despite little evidence of a child’s progress.
2. There are a number of evidence-based programs available to schools, but we infer that due to the intensity of teaching required to implement those, they are largely rejected. For example Dyslexia, a disability that does not include intellectual disability but severely affects the manner in which they learn, does not attract individual funding as mentioned above. Therefore, failure to achieve academically for students with Dyslexia can be linked to the quality of their teaching rather than their inability to gain academic skills.

1. Standardised testing to benchmark literacy and numeracy is often not used.

**General**

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, through litigation, DET attempts to discredit these experts, their diagnosis and recommendations. This gives us some insight as to the respect accorded to disability experts, and the disinclination by DET staff to work collaboratively with them.

1. DET systematically reject the recommendations of practitioners who have treated the student over some time, when DET itself allegedly has very limited resources to devote to developing support plans that are appropriate to each individual child’s needs. It is 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 behaviouralists or behavioural psychologists should develop Positive Behaviour Plans rather than general teachers).
2. 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 then, 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.
3. Internal DET procedures and guidelines are being discarded as families actually call DET to account in relation to the following of its own protocols. Individual Education Plans, the 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 behaviouralists to assist in the development of such plans are refused such assistance.

1. DET psychologists are controlled by internal practices and workforce shortages which do not allow them to put in place the required therapies and support . Consultation with professionals, mentioned in DET documents as important to include in the support of children with disabilities (such as in their Student Support Group Guidelines), 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. In practice DET is abandoning its own policies and procedures, relegating them to having the status of "guidelines only" and instead invests significant 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.[[11]](#footnote-11) 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.[[12]](#footnote-12) 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.[[13]](#footnote-13)
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.

**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.

**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 the 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.[[14]](#footnote-14) 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”.[[15]](#footnote-15)
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.[[16]](#footnote-16)
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.’*[[17]](#footnote-17)

**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 [[18]](#footnote-18)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.

**Abuse of Students with Disabilities in Schools**

1. The VEOHRC report entitled *Held Back: the experiences of Students with Disabilities in Victorian schools.[[19]](#footnote-19)* 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[[20]](#footnote-20) and the Office of the Public Advocate through a position paper[[21]](#footnote-21). The Department Of Education and Training have not prohibited seclusion.
2. The Department Of Education and Training continue not to alter its Restraint Policy in response to recommendations from VEOHRC[[22]](#footnote-22). These are simply a few of the many examples of Australia, through it states, not complying with its international obligations.
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.

**A means to communicate complaints of abuse**

1. One of the major barriers to an individual not being able to complain about abuse in schools or inform their families, is them being denied functional communication.
2. 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.
3. The right of an individual to communicate through augmentative and alternative means is not a priority for 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.
4. 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.
5. 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.
6. People with disabilities should not have to litigate to communicate.

**Expense to the Commonwealth of Denying Education to Students with Disabilities**

1. There are significant expenses to the Commonwealth Government due to students with disabilities not being able to access an education.
	1. When people are uneducated, they cannot get a job.
	2. When people cannot get a job, they do not pay taxes.
	3. People with disabilities who cannot get jobs are often placed on the Disability Support Pension.
	4. When children with disabilities are traumatised by restrictive practices, challenging behaviours worsen which can result in requiring significant services from Department of Health And Human Services - both while they are at school, and after.
2. There is significant evidence of expenditure linked with a lack of education.[[23]](#footnote-23)

**Legal Protection for Students with Disabilities**

1. We attach our submission on the Review of the Disability Standards for Education. In our view, the *Disability Discrimination Act 1992* is inadequate and does not uphold the right of students with disabilities to obtain an education.

**Recommendations**

1. **We endorse the recommendations of the Victorian Equal Opportunity and Human Rights Commission and the Victorian Auditor General's Office made in their reports on education as set out in the above submission.**
2. **We refer to our recommendations in our submission regarding the Review of the Disability Standards for Education with a view to strengthening legislation around the rights of students with disabilities to have an education.**
3. **We recommend that the Commonwealth takes over responsibility for the funding of education in the States**.

It is clear, in Victoria at least, that the Department of Education and Training have no intention of responding to the many and varied criticisms relating to the education of students with disabilities made over the years by statutory authorities, students, advocates and parents. On the contrary, over the last 20 years, the quality of education for students with disabilities has deteriorated. While the dollars seemed to be available for legal proceedings involving education, DET are not in favour of funding schools in order that they meet their obligations to students with disabilities. It is the Commonwealth that suffers most significantly, in economic terms, from the States not meeting those obligations. It is also the Commonwealth that has the responsibility of reporting on Australia's compliance with the international conventions that Australia is a signatory to, conventions that set out a right to education as a human right.

If the Commonwealth is not minded to take over funding, our alternative recommendation is that the Commonwealth set key selection criteria for the States that require actual evidence of academic achievement of students with disabilities.

1. "Held Back-The Experiences of Students with Disabilities in Victorian Schools" Victorian Equal Opportunity and Human Rights Commission 2012

"Programs for Students with Special Learning Needs" Victorian Auditor General's Office 2012 [↑](#footnote-ref-1)
2. http://www.education.vic.gov.au/school/principals/finance/pages/srpref015levels.aspx

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3. Program for Students with Disability Guidelines 2015 p2 [↑](#footnote-ref-3)
4. http://www.theguardian.com/education/2009/sep/04/teaching-assistants-classroom-improvements [↑](#footnote-ref-4)
5. *Report of the Ministerial Working Group Program for Students with Disabilities April 2005*,p. 29 [↑](#footnote-ref-5)
6. "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-6)
7. Australian Bureau of Statistics. (2008). [↑](#footnote-ref-7)
8. Program for Students with Disability Guidelines 2015 page 5 [↑](#footnote-ref-8)
9. Turner v State of Victoria (VCAT 2007) VCAT 873 [↑](#footnote-ref-9)
10. http://www.education.vic.gov.au/school/principals/spag/governance/pages/restraint.aspx [↑](#footnote-ref-10)
11. DET *Program for Students with Disabilities 2006*, Language Disorder Program Handbook Page 11

 Program Students with Disabilities Handbook 2015 p 6 [↑](#footnote-ref-11)
12. DET *Program for Students with Disabilities Handbook* 2005 p 12 [↑](#footnote-ref-12)
13. Speech Pathology Australia, *Briefing Paper: Students with Severe Language Disorder in Victorian Government Schools* (2006), p. 1. [↑](#footnote-ref-13)
14. *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-14)
15. 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 **Error! Bookmark not defined.** and accompanying text. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. 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-17)
18. "Program for Students with Disabilities-Autism Spectrum Disorder, Supplementary Guidelines for Speech Pathologists-Pragmatic Language [↑](#footnote-ref-18)
19. 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-19)
20. ‘Held Back’ p 124 [↑](#footnote-ref-20)
21. ‘Restrictive Interventions in School Settings’ March 2013 [↑](#footnote-ref-21)
22. ‘Held Back’ p 124 [↑](#footnote-ref-22)
23. Koen, S., & Duigan, P. (2008). Forging brighter futures: Innovative approaches to improving prospects for at risk young people. Paper delivered at The History and Future of Social Innovation Conference, June 2008, Adelaide. <http://www.unisa.edu.au/hawkeinstitute/publications/social-innovation/koen-duigan.pdf>

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