



Date: 31 August 2020

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Education and Learning Issues Paper

Overview of Responses to the First Education and Learning Issues Paper: Response by Australian Coalition for Inclusive Education

INTRODUCTION

1. The Australian Coalition for Inclusive Education (**ACIE**) is an initiative bringing together organisations that share a commitment to advance Inclusive Education in Australia, across State and Territory education systems, including government and non-government schools.
2. The members of ACIE thank the Royal Commission into Violence, Abuse, Neglect and Exploitation of People With Disability (**Royal Commission**) for publishing the 'Overview of responses to the first Education and Learning Issues Paper' published by the Royal Commission on 28 July 2020 (**Overview Paper**).
3. We understand that the Royal Commission received 49 responses to its Education and Learning Issues Paper, 28 of which are published on its website. The published responses include one response from a government education department (namely, the New South Wales Education Department) and two responses from people with disability. We understand there were no responses (including unpublished) from First Nations or culturally or linguistically diverse people with disability or children or young people with disability.
4. We are disappointed that the education departments of the Commonwealth and every State and Territory, entrusted with delivering education services to the public (including to students with disability) and in the public interest, having regard to their own and Australia's legal and international obligations, have either contrary to the interests of the public sought that their submissions be treated as 'confidential' or, in neglect of their public duties and specifically their obligations to students with disability, failed to make any submission on such a critical and threshold issue to life-long outcomes for people with disability.

5. We note that in addition to individual organisation submissions, ACIE members as a coalition have made two submissions to the Education and Learning Issues Paper and have also advised the Royal Commission of their endorsement of the comprehensive submission made by All Means All – The Australian Alliance for Inclusive Education (**All Means All Submission**).
6. The members of ACIE would like to take this opportunity to make a submission in response to the Education and Learning Issues Paper, outlining a collective position in respect of significant matters arising from the Overview Paper and the published responses.
7. While we understand that the purpose of the Overview Paper is to provide a brief summary of the range of responses to the Education and Learning Issues Paper and that the Royal Commission is not purporting to comment on the merit of any such responses, we ask that the Royal Commission give due consideration to the matters raised in this document.

OUTLINE OF SIGNIFICANT MATTERS

8. In light of the Overview Paper and the published responses to the Education and Learning Issues Paper, the members of ACIE are particularly concerned to draw the following significant matters to the Royal Commission's attention:
 - the 'inevitable' bias of governmental and private organisations and professional associations with vested interests in maintaining, or limiting progression from, the 'education status quo' for people with disability and the fact that such organisations and associations are 'conflicted' in representing, and advocating for the human rights of, people with disability;
 - that against the starting human rights premise of the equality of humanity and the fact that over 40 years of research overwhelmingly supports the benefits of Inclusive Education, the onus of demonstrating an objective and sound evidential basis for continuing to segregate students with disability in 'special' schools, units and classrooms lies with those that seek to maintain, or limit progression from, the 'status quo'; and
 - that the segregation of students with disability in 'special' schools, units and classrooms is, as a human rights and moral matter, properly described as 'segregation' - rather than 'sanitised', 'euphemised' or 'neutralised' as 'separate' or 'special'/'specialised' education.

IMPACT OF VESTED INTERESTS

9. The Overview Paper notes that submissions were received from 'a range of organisations.'
10. Apart from government departments or agencies, the organisations that responded to the Overview Paper and that have had their submissions published on the Royal Commission's website can be divided into the following relevant categories:
 - disability representative organisations, concerned with the legal and human rights of people with disability; and
 - organisations involved in the provision of services to people with disability, including education or related allied health services, and which derive an economic or other benefit from existing service delivery models and therefore have a vested interest in the current system.

11. The Royal Commission's Terms of Reference expressly recognise the obligations on Australian governments under the Convention on the Rights of Persons With Disabilities (**CRPD**) and that 'it is important that people with disability are central to processes that inform best practice decision-making on what all Australian Governments and others can do to prevent and respond to violence against, and abuse, neglect and exploitation of, people with disability'.
12. We note that General Comment No.7 was issued by the Committee on the Rights of Persons With Disabilities (**CRPD Committee**) in 2018 'on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention',¹ which is enshrined through Articles 4(3) and 33(3) of the CRPD in particular.
13. Relevantly, General Comment No.7 makes a distinction between the status and role of disability representative organisations on the one hand, and disability service provider organisations on the other, whose activities 'in practice, may result in a conflict of interests in which such organizations prioritise their purpose as private entities over the rights of persons with disabilities'².
14. This distinction is important and highly relevant to the context of education. Stakeholders who are invested in the current 'parallel' ('mainstream' and 'special') education system, including education, union, service and professional groups, often resist change that may alter situations of relative privilege and convenience from which they or their members benefit:

Professional groups involved in special education, such as teachers, psychologists and testing centres frequently oppose desegregation in order to protect vested interests.³
15. The influence of 'vested interests' has long been a factor in the outcome of the inquiries into the education of students with disability undertaken in Australia in the last decade, where greater weight has often been given to the views of incumbent organisations and service providers over the views of people with disability and their representative organisations. For example, this was evident in the report of the New South Wales Parliamentary Committee into 'Education of students with a disability or special needs in New South Wales,' which ultimately adopted a position advocated by the NSW Primary Principals Association and other education service providers, in support of segregated settings and the proposition that such settings 'can be reconciled with an inclusive approach to education',⁴ over the clear contrary views of several disability representative or advocacy organisations advocating a conceptualisation of Inclusive Education consistent with a human rights-based approach.

¹ General Comment No. 7 'On the Participation of Persons With Disabilities, Including Children With Disabilities, Through their Representative Organizations, in the Implementation and Monitoring of the Convention' (2018) CRPD/C/GC/7.

² Ibid at [13].

³ Council of Europe, Commissioner for Human Rights (n 109) 10-11.

⁴ NSW Legislative Council, Portfolio Committee No.3, Education of Students With a Disability or Special Needs in New South Wales (Report, 2017) at [2.70]
<<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6114/170921%20-%20Final%20report.pdf>.

16. As outlined in the All Means All Submission, Inclusive Education continues to meet with great resistance from such 'vested interests' including in particular those working in the field of 'special education'.⁵

17. We also note the common theme of 'parent choice' in the submissions of those supporting the maintenance of segregated education [REDACTED]

[REDACTED] and the NSW Education Department which operates a 'dual tracked' education system comprising segregated 'special' settings for students with disability. Again, we refer to the All Means All Submission, in relation to the complex issue of 'parent choice' in this context, which notes:

Governments around Australia and teacher unions and other groups frequently invoke the mantra of 'parent choice' to legitimate the maintenance of, and continued investment in disability-based segregation of students with disabilities [...] This superficial 'mantra' cloaks the complex dynamics of the exercise of parental 'choice' in this context. It also deflects deeper consideration and interrogation of those dynamics, particularly their impact at a systemic level, and the role played by key stakeholders with particular agendas or 'vested interests', such as governments, education systems and education and health professionals, instead attributing (or defraying) responsibility to individual parents of students with disabilities⁶.

18. More broadly, the role of parents of children with disability and some parent-led organisations has at times been the subject of significant criticism from people with disability and their representative organisations. While many parents have played a critical role in improving outcomes for their children with disability, in some instances parental advocacy has been deeply problematic and acted as barrier to the empowerment of people with disability.⁷

19. It is important the Royal Commission is cognisant of the fact that some parent-led organisations make claims that not all children are able to be included in regular education settings, or are too disabled to be afforded their right to an inclusive education. This assertion is not evidence-based⁸ or consistent with the universality of the right to inclusive education as applying to all people with disability. Parental wishes or preferences cannot override the human and legal rights of children and young people with disability to an education. This principle is reflected in the CRPD Committee's General Comment No.4 which characterises inclusive education under Article 24 of the CRPD as:

[A] fundamental human right of all learners – notably, education is the right of the individual learner and parental responsibilities in regard to the education of a child are subordinate to the rights of the child.⁹

⁵ See All Means All, *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Response to the Education and Learning Issues Paper* (Submission, March 2020) Part 4.5.4.

⁶ All Means All (n 5) at [365-366] but see generally Part 5.4.14.

⁷ Allison C. Carey, Pamela Block, P. and Richard K. Scotch, 'Sometime Allies: Parent-Led Disability Organizations and Social Movements' (2019) *Disability Studies Quarterly* 30(1); Anne McGuire, *War on Autism: On the Cultural Logic of Normative Violence* (2016) Ann Arbor: University of Michigan Press.

⁸ Kathy Cologon, *Towards Inclusive Education: A Necessary Process of Transformation* (Report for CYDA, 2019) <<https://www.cyda.org.au/resources/details/62/towards-inclusive-education-a-necessary-process-of-transformation>>; Robert Jackson, 'Inclusion or Segregation for Children with an Intellectual Impairment: What Does the Evidence say?' QPPD <<https://www.ohchr.org/Documents/Issues/Disability/StudyEducation/NGOs/AustraliaNationalCouncilIntellectualDisability2.pdf>>; Kate De Bruin, 'Does Inclusion Work? Chapter 3' In Linda J. Graham (ed), *Inclusive Education in the 21st Century: Theory, Policy and Practice* (Sydney: Allen and Unwin, 2019) 58

⁹ General comment No. 4, 'Right to Inclusive Education' (2016) CRPD/C/GC/4 at [10].

20. The Australian disability community worked tirelessly for over a decade to persuade the federal government to undertake this Royal Commission and to ensure that its work is framed by a human rights-based approach, which includes proper recognition of the role and status of people with disability and their disability representative organisations in accordance with the principles of the CRPD, and as reflected in the mantra of the international disability community, *'nothing about us without us'*¹⁰.
21. We ask that the Royal Commission accord priority and attribute weight to the various positions advanced in the submissions to the Education and Learning Issues Paper, by having regard to these inherent structural and human rights considerations and principles.

EVIDENCE FOR SEGREGATION OF STUDENTS WITH DISABILITY

22. The Overview Paper noted 'a range of views, particularly about the concept and understanding of 'inclusive education' and the role of separate education settings' (*sic*).
23. The Overview Paper also notes that a range of research evidence was identified in support of Inclusive Education. Several of the published submissions also provide information about research evidence in support of Inclusive Education. Further, members of ACIE have also provided, through their submissions, information to the Royal Commission in relation to the significant body of research evidence in support of Inclusive Education, spanning more than 40 years. This research shows that when students with disability are included in regular classrooms in general education and receive the necessary supports, they are likely to learn and achieve more socially and academically and to enjoy better post-school outcomes¹¹, and that all learners benefit from inclusive school cultures and practices.¹² The education of students with complex disability in inclusive settings is equally supported by the research evidence¹³ despite the suggestion in some of the published submissions (e.g. NSW Department of Education¹⁴) that segregated settings are needed for students with complex disability.
24. In our review of the 28 published submissions, we noted that a number of statements have been made asserting the benefits of segregated 'special' education. The Overview Paper also noted, for example, that some responses suggest 'greater employment potential, community contribution, social inclusion and independence' can also be

¹⁰ See the remarks by Commissioner McEwin, a person with disability, at the first public sitting of The Royal Commission held in Brisbane on 16 September 2019.

¹¹ See for example, European Agency for Special Needs and Inclusive Education, Evidence of the Link Between Inclusive Education and Social Inclusion: A Review of the Literature (Report 2018), 14 <https://www.european-agency.org/resources/publications/evidence-literaturereview>.

¹² Todd Grindal, Thomas Hehir, Brian Freeman, Renee Lamoreau, Yolanda Borquaye and Samantha Burke, 'A Summary of the Research Evidence on Inclusive Education' (2016) <https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf>; National Council on Disability (USA, Independent Federal Agency), *The Segregation of Students with Disabilities* (Report, 2018) 9 <https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf?fbclid=IwAR2EI7a42DiSLc41f9nQgrZ7InQxJpjqEI4A4_vNG5yqJ6jptdNj4InkWPQ>; Kathy Cologon (n 8); Robert Jackson (n 8).

¹³ Kate De Bruin (n 8); See also Wayne S. Sailor and Amy B. McCart, 'Stars in Alignment' (2014) *Research and Practice for Persons with Severe Disabilities* 39(1), 55–64; Susan R. Copeland and Joanna Cosbey, 'Making Progress in the General Curriculum: Rethinking Effective Instructional Practices (December 2008) *Research and Practice for Persons with Severe Disabilities* 34(1), 214–227; Phil Foreman, Michael Arthur-Kelly, Sue Pascoe, and Brian Smyth King, 'Evaluating the Educational Experiences of Students with Profound and Multiple Disabilities in Inclusive and Segregated Classroom Settings: An Australian Perspective' (2004) *Research and Practice for Persons with Severe Disabilities* 29(3), 183–193; Conrad Carlberg and Kenneth Kavale, 'The Efficacy of Special Versus Regular Class Placement for Exceptional Children: A Meta-Analysis (1980) *The Journal of Special Education* 14(3), 295–309.

¹⁴ DRC Submission Reference ISS.001.00025

achieved in a separate school or classroom, or that a separate setting can assist students to transition to inclusive environments.¹⁵

25. However, these positions appear to be based on opinion or anecdotal evidence and not supported by any empirical evidence. Indeed, there is no substantive body of research that demonstrates better outcomes for students with disability in segregated 'special' settings¹⁶ despite purported advantages, such as 'specialist interventions', smaller class sizes and higher teacher to student ratios.¹⁷ Indeed, members of ACIE have been involved in many inquiries and reviews (nationally and at State and Territory level) into the education of students with disability and have observed this same pattern, where submissions in support of segregated settings reveal an absence of research-based evidence and rely almost exclusively on opinion and anecdotal evidence to provide a rationale for maintaining disability-based segregation in education.

26. In spite of the lack of evidence that segregated education improves educational outcomes (and indeed in spite of evidence that segregating approaches are detrimental), it is common for supporters of the 'dual system' status quo to demand empirical proof in support of Inclusive Education [REDACTED]

27. In our view, the onus, for many years now, has been and remains on those who seek to take students with disability out of general education classrooms on the basis of their disability, to prove that that such students, as individuals or as a group, benefit from segregating practices. In our view that onus has not been acknowledged, let alone discharged, in any of the published submissions to this Royal Commission, or in any other or earlier context.

28. We note in particular the reference in the Overview Paper, under the heading of 'Potential good practice in education of students with disability', to the submission of [REDACTED] that [REDACTED]'s submission promotes its 'satellite' model for the delivery of education to autistic students in (purportedly partial/temporary) segregated classrooms. We note that research into partial attendance of segregated settings does not show a benefit from withdrawing students with disability from their regular classroom for any portion of the day to attend a segregated classroom and in fact shows that the longer the proportion of the school day spent in the regular classroom, the greater the acquisition of academic, social and emotional skills and competencies by students with disability.²¹

¹⁵ See page 4 of the Overview Paper.

¹⁶ See National Council on Disability (n 12); Jackson (n 8); Kathy Cologon (n 8).

¹⁷ Julie Causton-Theoharis, George Theoharis, Fernanda Orsati and Meghan Cosier, 'Does Self-Contained Special Education Deliver on Its Promises? A Critical Inquiry into Research and Practice' (2011) *Journal of Special Education Leadership* 24(2), 61-78.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED]

²¹ Grindal et al (n 10) 19; See also new research published in July this year, finding that students with disability who spent 80% or more of their time in a general education did significantly better in both reading and maths assessment than their peers who spent more time in separate special education classrooms, Cole, S. M., Murphy, H. R., Frisby, M. B., Grossi, T. A., & Bolte, H. R. (2020). *The Relationship of Special Education*

SEGREGATED v 'SEPARATE': CHOICE OF TERMINOLOGY

29. The following paragraph appears in the Overview Paper under the heading 'Perspectives on different education settings and approaches':

Responses to date have reflected a range of views, particularly about the concept and understanding of 'inclusive education' and the role of separate education settings for students with disability, such as 'special schools' and 'special education' units or classes (which were referred to by some as segregated schools, units or classes). In this overview we refer to these schools, classes and units as 'separate settings'.

30. While, as previously stated, we understand that the purpose of the Overview Paper is to report on the range of submissions that have been made, we do not agree with the approach taken by the Royal Commission, in considering, and declining to adopt (in favour of 'separate') the term 'segregated' or 'segregation' in relation to disability segregated educational settings for students with disability. This decision is troubling.
31. In doing so, we understand that the Royal Commission is purporting to adopt 'neutral' language.
32. While we recognise that the term 'segregated' can elicit some emotional responses particularly from people who work in segregated settings and parents of children with disability who attend those settings, we do not think this is a relevant or appropriate basis for the Royal Commission to decide not to adopt the term for its official reports and other material.
33. Broadly, the term 'segregation' is used to refer to systems, policies or practices, including but not only in education, that share the characteristic of separating a group of people, usually based on a minority attribute – such as disability – from the dominant or majority group. As such, the term has had particular relevance in the struggle for disability rights and equality in the context of the historical, widespread and state sanctioned institutionalisation and confinement of people with disability as a minority group, that emerged particularly in the 18th Century.²²
34. As the Royal Commission is aware, the CRPD Committee is the treaty body responsible under the international human rights system for monitoring States Parties' implementation of the CRPD, including through its jurisprudence about the content of human rights provisions, the responsibilities of States Parties and suggested approaches to their implementation. The CRPD has adopted General Comment No. 4 on the Right to Inclusive Education under Article 24 and General Comment No.6 on Equality and Non-discrimination under Article 5.
35. While both General Comments use the words 'segregation'/'segregated' in the context of educational provision for students with disability, General Comment No.4 in effect defines the following as 'segregation':

Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities.'

Placement and Student Academic Outcomes. *The Journal of Special Education*
<<https://doi.org/10.1177/0022466920925033>>.

²² See for example Laura I. Appleman, 'Deviancy, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration' (2018) *Duke Law Journal* 68(3), 417-478.

36. Indeed, the UN Special Rapporteur on the Rights of Persons With Disabilities, Ms Catalina Devandas Aguilar, who holds the mandate from the United Nations Human Rights Council to report and advise on the implementation of the rights of people with disability globally, in her appearance as an expert witness at the Royal Commission's recent Public Hearing into impacts of COVID-19, used the term 'segregation' several times, in the context not only of education, but also residential institutional settings and the provision of services more broadly.
37. Further, Ms Devandas Aguilar also clearly stated, consistently with General Comment No.4 and General Comment No.6, that segregated education is 'against, of course, the Convention'²³ and that 'segregation is a grave source of discrimination that we need to stop.'²⁴
38. Ms Rosemary Kayess, the distinguished Australian legal academic and current Vice President of the CRPD Committee who was nominated to take that role by the Australian government, also used the term 'segregated' in the context of education and more broadly, in her evidence at the Royal Commission's Public Hearing into 'group homes'. Explaining the concept of 'life domains' she noted:
- Well, like domains will be, I mean, very much how the fact that we were talking about education a couple of weeks ago in Townsville. We are talking about group homes in Melbourne now. I know there will be a focus on justice at some point. It's these types of domains where segregated parallel systems have been established because social structures and administrative structures are not inclusive for people with disability.²⁵
39. Ms Kayess also stated at that Public Hearing that 'I think it's important that we understand that the CRPD is about addressing segregation on the basis of disability',²⁶ specifically emphasising segregation as a critical cross-cutting theme and stating 'the fact we are probably going to be talking about the same situation across education, across justice, and across health means that we need to interrogate that segregation and what drives that segregation and how we break down and end that segregation'.²⁷
40. The term 'segregation' in the context of disability and including in relation to the education of students with disability, has also been widely adopted by other United Nations bodies and experts under the UN system.²⁸ For example, the term is used throughout the report delivered by the United Nations High Commissioner for Human Rights, Ms Michelle Bachelet, to the United Nations Human Rights Council in 2019, titled 'Empowering Children with Disabilities for the Enjoyment of their Human Rights, Including Through Inclusive Education'.²⁹
41. In effect the term 'segregation' has emerged as a 'term of art' in international human rights law with a specialised meaning, particularly in the context of disability where it is used to refer to laws, policies and practices resulting in people being physically grouped together and separated from others on the basis of disability, such as special schools and classes, living institutions or sheltered workshops.

²³ Disability Royal Commission Transcript 19 August 2020, p. 185 at 6.

²⁴ Ibid, p. 185 at 26-27.

²⁵ Disability Royal Commission Transcript of Public Hearing on 6 December 2019, p.394 at 29-34.

²⁶ Ibid, p.395 at 33-34.

²⁷ Ibid, p.395 at 33-p.396 at 1-2.

²⁸ See for example the Committee on Economic, Social and Cultural Rights questioning the Australian government on 31 May of 2017 in relation to 'evidence of a rise in segregated education' and asking it to show the measures it was taking 'to ensure inclusive education across the country' <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21677&LangID=E>>.

²⁹ United Nations Human Rights Council, *Empowering Children with Disabilities for the Enjoyment of their Human Rights, Including Through Inclusive Education* (Report, 22 January 2019) A/HRC/40/27.

42. It is worth noting that throughout Australia there are many different labels applied to settings where education services are delivered to students with disability separately from students without disability (e.g. 'special school' 'specialist' school or unit or classroom, 'schools for specific purposes', 'special developmental' schools, 'education support' units, 'flexible learning' centres, 'learning studios', 'learning support' centres, 'multi categorical' classes, diverse learning programs, learning enrichment centre, resource centres, disability units, and even 'inclusive learning' units and others).
43. In the context of disability, the term 'segregation' is an umbrella term that applies to a range of settings and models, including in education that, regardless of how they are labelled, share physical exclusion from the 'regular majority' on the basis of disability (or particular disabilities) as a characteristic.
44. While it is recognised that many euphemistic labels are used in this context, it is worth also noting that the terms 'special' and 'specialist'³⁰ (including 'special needs'³¹) to characterise segregated settings and models are not only imprecise but are also highly contested by the international disability community³² and, in our view, it would not be appropriate to use either as an umbrella term in place of 'segregation'/'segregated' such as by describing segregated setting as 'special settings' or 'specialised settings' - although it may, in some contexts, be appropriate to use the relevant label, provided it is qualified by reference to the type of setting, such as by saying 'a segregated '[label]'' (e.g. a segregated 'special school' or a segregated 'education support unit').
45. While we are aware that some people perceive the terms 'segregation' or 'segregated' as pejorative, we believe that this is not a relevant or appropriate basis for the Royal Commission to decline to use the terms.
46. In our view, the Royal Commission's conscious decision to replace the term 'segregated' with 'separate' creates the perception that the Royal Commission may be departing from a human rights-based approach and preferring 'sanitised' terminology over the language adopted by the CRPD Committee and other United Nations experts and preferred by the international disability community in human rights discourse.
47. Finally, we find the idea of 'neutrality' to be problematic in light of the Royal Commission's Terms of Reference.
48. While the Royal Commission is an independent inquiry, that does not mean that it is 'neutral' in an unqualified sense. In this regard, the Terms of Reference not only outline what the Royal Commission should and should not look at as part of its inquiry (being the matters in (a) to (j) under the chapeau to the Letters Patent that begins with the words "now therefore"), it clearly sets out the baseline position from which such inquiry is to be undertaken. This is the purpose of the preceding words that follow from the word "recognising", which call on the Royal Commission to undertake its inquiry on the basis of, among other things, recognition that people with disability have the right to the full

³⁰ The term 'specialist' is increasingly replacing 'special' as a euphemism and it is no less problematic, not only because of its association with, and similarity to, the terms 'special' and 'special needs' but because of its connection with a medical model perspective of disability as a rationale for segregating people with disability into 'specialised' sites. As noted in the All Means All Submission (see Part 4.4 in particular), the use of 'scientific' language has been used for a long time, to give professional credibility to non-evidence based practices for people with disability.

³¹ See Morton Ann Gernsbacher, Adam R. Raimond, Theresa M. Balinghasay and Gilana S. Boston, "Special Needs' is an Ineffective Euphemism' (2016) *Cognitive Research* 1, 29; See also the international video campaign 'Not Special Needs' which tried to use humour to discourage use of the term 'special needs'.

³² See People With Disability Australia's 'What Do I Say? A Guide To Language About Disability'.
<<https://pwd.org.au/resources/disability-info/language-guide/>>.

and equal enjoyment of all human rights and fundamental freedoms and to freedom from violence, abuse, neglect and exploitation and that Australia has human rights obligations under international law including, specifically, the CRPD.

49. In our view, the Terms of Reference import into the Royal Commission's inquiry the normative standards embodied in the CRPD (which are to be understood in accordance with international human rights law including the jurisprudence of the CRPD Committee) and preclude a challenge or interrogation of those standards. As such, the Royal Commission is not permitted to be 'agnostic' about the CRPD and must apply it as a lens or framework through which it examines the matters into which it is tasked to inquire. Any notion of 'neutrality' must be understood as being qualified accordingly.
50. Further, by refusing to adopt the word 'segregation' the Royal Commission is opening itself up to criticism that it is taking a denialist approach and actively choosing to adopt a euphemism ('separate') to alleviate the unease of some parts of the community (including governments³³) with an uncomfortable historical but unfortunately continuing truth.
51. Segregation of people with disability is a historical and verifiable continuing reality and a concept recognised under the international human rights framework. The Royal Commission's decision not to use this term may be seen to be withholding recognition of this experience and reality for people with disability and challenging (as opposed to 'recognising') the applicable human rights framework. The replacement of the term 'segregation' with any euphemism that may have the effect of 'detoxifying' or obscuring the nature of these discriminatory practices is neither helpful nor appropriate.
52. The position of the Royal Commission in the Overview Paper is also perplexing given that the term 'segregation' or 'segregated' has been used by the Chair of the Royal Commission,³⁴ the two Commissioners with disability³⁵ and Counsel Assisting in the context of the Royal Commission's work³⁶. It was also used in the Education and Learning Issues Paper as well as other Issues Papers³⁷ and the 'Statement of concern: The response to the COVID-19 pandemic for people with disability'. The decision in the Overview Paper appears to be a conscious departure from that former approach and is extremely concerning.
53. Last, we would question the characterisation of the term 'separate' as a 'neutral' term – and note its historical use in government policy to 'sanitise' segregation of a minority for the consumption of the non-segregated majority. For many decades in the United States, the term 'separate but equal' was the phrase used to describe the doctrine that permitted racial segregation of people of colour and which rejected by the Supreme

³³ Noting that the Queensland Inclusive Education Policy adopts the term 'segregation' and references the CRPD Committee's General Comment No.4 < <https://education.qld.gov.au/student/inclusive-education/Documents/policy-statement-booklet.pdf>>.

³⁴ See for example the Chair's opening statement at Public Hearing 5, noting that many people with disability 'live in *segregated* settings' (p.5).

³⁵ See for example the remarks by Commissioner Alastair McEwin on 'International Day of People With Disabilities opening remarks: Day 2 of Melbourne hearing - 3 December 2019' stating that 'As disabled people, we are the experts in our lives. We are the ones who have experienced *segregation*. We are the ones who have experienced social barriers. And we are the ones who continue to experience violence, abuse, neglect and exploitation in Australia. As experts in our lives, we will lead the change to ensure an inclusive society.'

³⁶ See for example, the opening statement by Dr Mellifont in Transcript of the Public Hearing on 4 November 2010 where she stated 'Research and information thus far has indicated that *segregation* from the mainstream classroom has a compounding effect on First Nations students with disability as it is often the case that special schools, units and classrooms lack the cultural education and connection to community that may be provided in the mainstream environment' (at 1, p. 13) and 'Traditional practices such as *segregation* continue to exist including by the continued provision of separate special schools' (at 21 p.16).

³⁷ See [Employment Issues Paper](#) and [Emergency Planning and Response Issues Paper](#) for example.

Court in the context of segregation in education in the 1954 case of *Brown v Board of Education* (which declared that ‘in the field of public education the doctrine of ‘separate but equal’ has no place’).

54. For the above reasons, we ask the Royal Commission to:

- promptly restate its position on “‘segregated’ versus ‘separate’”, as it is a matter critical to the education of people with disability, the broader issues and matters to be considered by the inquiry and to the ongoing trust of people with disability and their representative organisations in the Royal Commission; and
- continue to adopt human rights-based terminology, including in the upcoming Interim Report.

This Submission was developed by the Australian Coalition for Inclusive Education.

