



**Submission to the Submission to the NSW Government
Response to the
Disability Royal Commission (DRC) final report**

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Cecile Sullivan Elder Executive Officer,
Family Advocacy
cecile@family-advocacy.com

Leanne Varga
Systemic Advocate
leanne@family-advocacy.com

Family Advocacy (02) 9869 0866
Suite 704, 88-90 George Street,
Hornsby, NSW 2077, Australia

Acknowledgement:

Family Advocacy would like to acknowledge the traditional custodians of the lands on which this report has been written, reviewed and produced, whose cultures and customs have nurtured and continue to nurture this land since the Dreamtime. We pay our respects to their Elders past, present and future. This is, was and always will be Aboriginal land.

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Executive Summary

Family Advocacy supports the notion the Early Years Strategy (the Strategy) “will create an enduring vision for Australia’ children and their families.” As a disability advocacy organisation that seeks to promote and defend the rights and interests of people with a developmental disability across NSW, we see the potential for the envisioned Strategy to fulfil this purpose for children in the early years.

Throughout this submission, we provide evidence which demonstrates the many ways children with disability (and by default their family members) continue to be subject to devaluation, marginalisation, exclusion and discrimination. Solutions to these challenges will be discussed and it is with this lens, we make the following recommendations.

Summary of recommendations:

- Recommendation 1: Developing an Inclusive Education System.
- Recommendation 2: Encouraging Transformational Leadership.
 - Merging our parallel system of mainstream and Early Intervention Centres into one holistic system
 - Use the Early Years Strategy to develop a national inclusive education plan to gradually phase out segregation and exclusionary practices
 - Develop transformational leadership amongst Early Childhood Directors, and educators and parents
- Recommendation 3: Educating for Life.
- Recommendation 4: Promoting an Inclusive Culture.
- Recommendation 5: Developing Partnership.
- Recommendation 6: Investing in Equity.
- Recommendation 7: Tackling Barriers to Participation.
 - Adoption of an Early Years Inclusive Education Strategy
 - Ensure the legislative/policy frameworks and good inclusive practice are known and understood by early educators/leaders.
 - Independent complaints process
- Recommendation 8: Strengthening Inclusive Pedagogy.
- Recommendation 9: Prioritising Professional Development.
- Recommendation 10: Learning from Experience.
- Recommendation 11: Plotting the Journey to Inclusion.
- Recommendation 12: Effective and efficient funding allocation.

Introduction

Family Advocacy are not for profit disability advocacy organisation that works across New South Wales (NSW) to advance and protect the rights and interests of people with developmental disability to live a meaningful inclusive life and experience the same opportunities as the majority of Australians. This means being included in education, employment, and community with the right to live safely, with dignity, and free from violence, abuse, neglect or exploitation.

We were founded 32 years ago by families whom work with, for, and on behalf of, people with disability. We continue to be governed by families and provide support in the following ways:

- Advocacy advice and advocacy information to individuals
- Advocacy development for family members of a person with disability
- Systemic Advocacy

Family Advocacy appreciate the opportunity to provide a submission about the NSW Government Response to the Disability Royal Commission (DRC) final report. Family Advocacy stood alongside people with disability and their families throughout the Disability Royal Commission, supporting them to share their experiences and provided systemic policy submissions on various topics, calling for genuine reform.

We note the two questions you are asking:

1. Which recommendations do you think are most important, and why?
2. Do you disagree with any of the recommendations? Why?

Broadly speaking, most of the Disability Royal Commission's 222 recommendations are encouraging to read and represent a meaningful step towards a more just and equitable society for all. We are disappointed that on some key points, the Commissioners failed to agree resulting in several split recommendations, such as in education and housing. This lack of consensus on the best way forward risks potentially slowing the momentum for transformational change. Family Advocacy calls on the NSW government to give significant weight to the views of the 3 Commissioners with lived experience of disability particularly their recommendations to end segregation, and provide adequate safeguarding and oversight mechanisms across all settings.

We acknowledge the recommendations are voluminous and complex, and require thoughtful and deep consideration by government and community, particularly in light of other reforms suggested within the disability landscape such as the recent NDIS Review final report. We are hopeful this submission is regarded as the beginning of an ongoing conversation between us. To avoid repetition throughout the submission, please take it as given that for each priority put forward, the reforms need to be implemented with clear timelines, transparency of the process, and where people with developmental disability, their families, and Family Advocacy will have a seat at the table with the co-design, implementation and review of these reforms.

We encourage the NSW government to adopt the Priorities suggested in this submission.

Priority 1 – Inclusive Education

Recommendations 7.1 – 7.13 Address the major reforms required to overcome barriers to safe, equal and inclusive education.

Recommendation 7.1 Provide equal access to mainstream education and enrolment

Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability

Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability

Recommendation 7.4 Participation in school communities

Recommendation 7.5 Careers guidance and transition support services

Recommendation 7.6 Student and parental communication and relationships

Recommendation 7.7 Inclusive education units and First Nations expertise

Recommendation 7.8 Workforce capabilities, expertise and development

Recommendation 7.9 Data, evidence and building best practice

Recommendation 7.10 Complaint management

Recommendation 7.11 Stronger oversight and enforcement of school duties

Recommendation 7.12 Improving funding

Recommendation 7.13 National Roadmap to Inclusive Education

Recommendation 7.14 Phasing out and ending special/segregated education. Address the ongoing segregation of students with disability in education.

Why?

All Commissioners agreed that the status quo can no longer be tolerated, stating: “a safe, quality and inclusive education can only be delivered through significant transformation of the school system. Recommendations 7.1-7.13 involve legislative and policy changes, improved procedures and support services, changes to culture, capability and practice ‘on the ground’, alongside enhanced workforce training and support, improved data collection and use, stronger oversight, and greater accountability. Our education enquiries have continued to rise over the last 5 years.

In relation to their Recommendation 7.14. Phasing out and ending special/ segregated education, apart from the moral imperative, there are many other justifications:

- acknowledges the Australia's international human rights obligations under the CRPD, [Article 24 \(Education\)](#) and [General Comment No.4](#);

- supported by legislation and policy¹;
- decades of research showing better social, academic and life outcomes for ALL children²;
- it increases the likelihood of employment (economic contribution) in the post school years with less reliance on the welfare system³; and
- it is better for society as a whole because our society is made up of diverse communities and this reality should be reflected in our education settings.

The DRC heard overwhelming evidence that people living in segregated settings are more likely to experience violence, abuse, neglect and exploitation. All Commissioners agreed that reforms are required to ensure that no one is forced to participate in settings designed exclusively for people with disability. However, Commissioners were split over the future of settings such as special schools. We agree with Commissioners Galbally, McEwin and Bennett (who have lived experience of disability) and call on the government to give significant weight to the their recommendations.

This recommendation proposes a phased and responsible transition, complete with practical, time-bound targets and budgets, to eliminate discrimination through segregation and create a universally accessible, high-quality, and inclusive education system. Inclusive education can only be achieved through ongoing enhancement of mainstream practices alongside a phased and responsible transition away from segregated approaches. This transition involves moving away from "special" schools, co-located education support units within mainstream school premises, and "special" classes where students are segregated based on their disability.

Until we merge the parallel tracks of mainstream and segregated education into a single inclusive pathway to education, regular schools will not undergo the necessary transformation to provide equal and non-discriminatory education to all children, regardless of disability. This alignment is fundamental to realising an inclusive education system where all children attend school, play, grow, and learn together, fostering authentic and reciprocal connections and relationships that promote respect for their diverse differences and contribute to a more inclusive society.

While we acknowledge that the longer timeframe proposed by Commissioners Galbally, McEwin, and Bennett is intended to ensure sufficient time for implementing reforms in mainstream education, the suggested timeframe of ending segregation by 2051 is unduly conservative and risks leaving two more generations of children behind. We strongly recommend that the government tightens this timeframe so less children are impacted negatively by continued segregation. This is not the first time Education has come under govt review/inquiry at NSW and Federal level. So it is not the first time governments have had many of these recommendations put before them. We recommend the Australian Coalition's for Inclusive Education's 10 year Roadmap. ['Driving change: A roadmap for achieving inclusive education in Australia'](#).

We recognise the implementation of Recommendations 7.1-7.14 will require specific long-term planning and budgetary allocations, involving co-design with people who have the lived experience of disability, their families, disability advocacy organisations and disability representative organisations. Ultimately, it will be worthwhile to

¹ United Nations Educational, Scientific and Cultural Organisation, *The Salamanca Statement and Framework For Action on Special Needs Education*, June 1994; UN Sustainability Goals 2030, Goal No.4 being to "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" by 2030; Disability Discrimination Act 1992; *Disability Standards in Education 2005* (Cth) Australia's Disability Strategy and the Early Childhood Targeted Action Plan;

² Jackson, R (2008). Inclusion or segregation for children with an intellectual impairment: What does the research say? Queensland Parents for People with a Disability. Kathy Cologon (2013). Inclusion in education: towards equality for children with disability. Children and Young People with Disability Australia. <http://www.cyda.org.au/inclusion-in-education>

³ http://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf.

improve laws, policies, structures and practices to ensure a more inclusive and just society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Priority 2 – Employment

Phase out segregated employment and raise the subminimum wage

Recommendation 7.28 - To support transition away from segregated employment, Commissioners recommended an information campaign regarding wages and the Disability Support Pension.

Recommendation 7.29 - To support transition away from segregated employment, Commissioners recommended an 'open employment first' approach in the NDIS Participant Employment Strategy.

Recommendation 7.30. - To develop a plan to assist people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment.

Recommendation 7.31 - To raise the sub-minimum wage through a scheme to ensure that people with disability are paid at least half the minimum wage and To develop a model and pathway to lift minimum wages to 100% of the minimum wage by 2034.

Recommendation 7.32 - To complete the transition away from segregated employment by 2034, supported by Commissioners Bennett, Galbally, Mason and McEwin.

Why?

People with disability, like everyone in society, need employment for economic security to access safe and secure housing, health, education and other supports. Employment also provides meaningful social engagement and community participation which are often out of reach for people with disability. Also, under [Article 27](#) (work and employment) of the CRPD, people with disability have a human right to access employment on an equal basis as others. This includes having the choice around the what, where and how of one's employment.

We know from the statistics, little has changed in relation to the poor employment record in Australia for people with disability over the last 30 years. People with disability are often moved along a seamless segregated pathway from education to employment, earning well below the minimum wage. This leads to a life lived parallel to, but genuinely a part of, community. It also leads to a life of poverty with heavy reliance on the Disability Support Pension. For these reasons, Family Advocacy wants to see an end to ADEs, fairly paid work for people with disability no less than the minimum wage and with opportunities for career progression.

Accordingly, given this cohort has been socioeconomically disadvantaged for such a long time, these recommendations should be a top priority for immediate action. There must be investment by government to support a structural and industry wide transition plan away from ADEs to support open employment for people with disability.

Employment within the public sector

Recommendation - 7.18 To establish specific and disaggregated targets for disability employment in the public sector.

Recommendation - 7.19 Establish specific disability employment targets for new public service hires in agencies and

departments.

Recommendation 7.20 - To clarify the application of the merit principle in public sector recruitment.

Recommendation 7.21 - To introduce consistent adjustment principles and adjustment passports.

Recommendation 7.22 - To introduce public reporting on public sector disability employment strategies and targets.

Recommendation 7.21 Develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.

Why?

The NSW and Australian Government public service employment ought to be reflective of the population. Currently, people with disability in NSW represent almost 1 in 5 of the population⁴. Disability employment is lacking across NSW government public services. Therefore, we welcome the target to ensure at least 7% of new public hires are people with disability by 2023 and 9% by 2030 but consider the target ought to be lifted to reflect the disability population beyond 2030. We also welcome the suggestion to create a sub-target for people with intellectual disability.

The NSW and Australian governments should use their purchasing power to influence pressure on the private sector to employ more people with disability, and deliver inclusive and accessible employment practices and systems.

Inclusion in the Disability Employment Services model

Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model.

The Australian Government Department of Social Services should ensure that the design of the new Disability Employment Services model:

- is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team
- adopts customised employment models as a core component of service provision

An inclusive workplace is one that actively recruits, welcomes, trains, supports, promotes and remunerates people with disabilities. An inclusive workplace is one that provides meaningful work for employees with disabilities within a regular setting. We welcome the recommendation to adopt customised employment models as a core component of service provision. This will involve setting up and investing in the infrastructure required to support the customised employment model.

Priority 3 – Housing

Recommendation 7.41 – part (a) - To specifically review mechanisms to transition away from allowing the same provider to provide supports and housing.

⁴ Australian Bureau of Statistics (ABS) Survey, Disability, Ageing and Carers, 2015 (ABS Cat No 4430.0) 2015, at www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0

Recommendation 7.42 - Improve access to alternative housing options.

Recommendation 7.43 - To phase out segregated housing within 15 years including delivery of inclusive housing supply to meet demand; transition support for people currently living in group homes; and transition planning undertaken through co-design with people with disability and the disability community.

Why?

People with disability should have greater choice and control and independence in choosing a home, and who to live with, as per [Article 19](#) (living independently and being educated in the community) and [Article 28](#) (adequate standard of living and social protection) of the CRPD.

We particularly support allowing greater flexibility and choice in housing through changing the NDIS funding model to ensure administration and pricing mechanisms do not default to group home living over alternative models of independent living. There is also recommended development of advice, support and advocacy to ensure people with disability understand and explore housing options.

Priority 4 – Restrictive Practices

Recommendation 6.36 Immediate action to provide that certain restrictive practices must not be used.

Why?

Family Advocacy continue to hear of examples of restrictive practices and the use of seclusion in all settings. It is well known that such practices can cause life-long wounding and trauma and distrust in services. The use of restrictive practices is a breach of the right to liberty, bodily integrity, and freedom from torture or cruel, inhuman or degrading treatment or punishment, as per [Article 15](#) of the CRPD (Freedom from torture or cruel, inhumane or degrading treatment or punishment).

We strongly reject the use of restrictive practices and seclusion in any setting and encourage this recommendation to be given more weight and deeper consideration.

Priority 5 – Independent oversight and complaint handling

Recommendation 7.10 Complaint management

Recommendations 10.11 - 10.33 - Strengthening the NDIS Quality and Safeguards Commission and making it more accessible.

Recommendation 11.1 - Creating a 'one-stop-shop' complaint reporting, referral and support mechanism for each state and territory

Recommendation 11.4 - Australia establishing a national 1800 number and website for complaints.

Recommendations 11.6 & 11.11 - Enshrining key provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Why?

Family Advocacy has long advocated for independent, robust oversight and complaint mechanisms in all settings. Accordingly, we fully support all of the recommendations 11.1-11.18 but draw attention to the above and in particular Recommendation 7.10.

We often hear in relation to education specifically, issues around the need to create a complaint management system that is at arms-length from schools. For too long, schools have policed themselves to the detriment of the student with disability and their family member concerned about potential consequences for their child and themselves.

Priority 6 – Advocacy

Recommendation - 6.21 Additional funding for advocacy programs

Why?

To promote and defend the rights and interests of people with disability, at an individual and systemic level, disability advocacy organisations require long term funding as this improves efficiency, staff retention, and builds trust.

Family Advocacy was founded to fulfil a need for advocacy support and development across NSW, so that family members of people with developmental disability could conduct the most potent and effective advocacy possible. We have been conducting advocacy advice, support and leadership development as well as systems advocacy in NSW for over 31 years and has been involved in multiple evaluations and reviews of both State and Federally funding advocacy programs over this time. Advocacy funding in perpetuity is essential for this to continue.

Priority 7 – Supported Decision Making

Recommendation 6.6 - Proposed a national supported decision-making framework to be adopted by states and territories, where people with disability would be supported to make their own decisions, where necessary (Recommendation 6.5)

Recommendation 6.9 - A 'representative' decision maker would only be appointed as a last resort.

Why?

People with disability ought to be able to enjoy legal capacity on an equal basis with others in all aspects of life, as per [Article 12](#) of the CRPD. This includes the right to make your own decisions and to receive support to make decisions. We continue to hear from many families where people with disability are being forced or funnelled into guardianship arrangements, far from being a last resort. We need to change the systems and structures that promote guardianship and substituted decision making towards a national supported decision making framework.

Priority 8 – Disability Rights Act

Recommendation 4.1 and 4.2 - That the Australian Government enacts a Disability Rights Act, that give effect to the rights set out in the Convention on the Rights of Persons with Disabilities (CRPD).

Recommendation 4.4 - The Act would apply to government and government agencies. However, the Disability Royal

Commission (DRC) wanted to consult on whether non-Government entities, such as NDIS providers, should be immediately subject to the Act with Commissioners Bennett, Galbally and McEwin recommending non-Government entities be included immediately.

Why?

For too long, the rights of people with disability are not being upheld and there is little remedy as a consequence any breach of these rights. A Disability Rights Act is strongly supported.

With the current Parliamentary Review into Australian Human Rights Framework, we would recommend adopting a Human Rights Act as per the recommendations made by the Australian Human Rights Commission (AHRC) in its submission to this Inquiry, of which a Disability Rights Act could form one arm. We agree with the view of the Australian Human Rights Commission that the next step towards a federal Human Rights Act is to develop a draft exposure bill based on the Australian Human Rights Commission's proposed model.

We wish to highlight that the right of people with disability to inclusive education should be explicitly incorporated into this a national Human Rights Act/ Disability Rights Act.

Given the evidence provided regarding violence, abuse, neglect and exploitation at many of the DRC hearings regarding NDIS providers, we strongly encourage the government to ensure NDIS providers are included in the Act.

Priority 9 – National Disability Commission

Recommendation 5.5 - The establishment of a National Disability Commission was recommended.

Recommendation 4.18 - The Commission was recommended to have key functions like supporting compliance with the proposed Disability Rights Act.

Recommendation 4.19 - Developing a co-designed complaints mechanism for people with disability.

Recommendation 4.21 - Strengthening awareness and understanding of disability rights.

Why?

In principle, we agree an independent National Disability Commission for oversight and enforcement of the proposed Disability Rights Act could provide a pathway for complaint making and remedies where a there has been a breach of rights. If this was to go ahead, disability representation and input would be required at all levels. We would provide a caution that there should be no overlap between other oversight bodies such as the Human Rights Commission and also that there be proper consideration around its structure, powers, and it have adequate resourcing.

Priority 10 – Minister for Disability Inclusion

It was recommended that the Australian Government establish new governance arrangements for disability by the end of 2024 (Recommendation 5.6) by creating:

- A portfolio responsible for the disability and carers policies and programs, currently the responsibility of the Social Services portfolio

- a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs, that are currently under the remit of the Minister for Social Services
- a portfolio responsible for a Department of Disability Equality and Inclusion

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A D V O C A C Y