

4 January 2016

Mr. Jorge Araya,
Secretary of the Committee
Committee on the Rights of Persons with Disabilities

Via email: jaraya@ohchr.org

Dear Mr Araya

Re: Draft general comment on art. 24 UNCRPD

1. Australian Lawyers for Human Rights ('ALHR') thanks the United Nations Committee on the Rights of Persons with Disabilities ('Committee') for the opportunity to provide comment on the draft general comment on article 24 of the UN Convention on the Rights of Persons with Disabilities ('CRPD'). ALHR welcomes the Committee's draft general comment on the right to inclusive education which brings to the forefront the importance for State Parties to immediately recognise this right and comply with the obligations provided by Article 24 of the CRPD.
2. **ALHR endorses the definitions describing 'inclusive education' and the 'right to inclusive education'** which reflect the human rights model and shift the focus on transforming educational systems, rather than trying to force persons with disability to assimilate. We also **support the broad understanding of education** embraced throughout the draft general comment, which rejects a narrow and restrictive focus on the aims of conventional education, whilst remaining focussed on ensuring that all students, including students with disability, have access to education in a broad educational curriculum that will equip them for the future, in literacy and numeracy goals consistent across all educational curricula.
3. Further, **ALHR strongly supports the Committee's clear focus on ability**, rather than disability, taken in the draft general comment. It is imperative to move the attention from a person's 'deficits,' which defines persons with disabilities by their impairment and immediately limits their opportunities and denies their full participation in education.

ALHR submits that this is a widely adopted attitude in Australia where practices of 'special schools' or 'disability units' within mainstream schools are commonplace.

4. **ALHR agrees with the Committee's broad approach to explaining the importance of inclusive education**, encompassing not only educational, but also social, cultural and economic considerations. ALHR endorses the explicit recognition in the draft general comment of the multiple disadvantages and discrimination faced by many persons with disabilities and of the urgent need to take a holistic approach to addressing the range of different cultural and attitudinal barriers that presently stand in the path of properly inclusive education. **ALHR acknowledges that these barriers go beyond factors specific to the educational sector** and require broader respect and fulfilment of the obligations owed by Australia in practices that currently permit the compounding of discrimination of persons with disabilities who may also experience other marginalization through age, gender or culture.

5. ALHR agrees that, notwithstanding the signing and ratification of the core international human rights law instruments that give rise to this right (particularly the CRPD, but also the UN *Convention on the Rights of the Child*, the *World Declaration on Education for All*, the UN *Standard Rules on Equalization of Opportunities for Persons with Disabilities* and the *Salamanca Declaration and Framework for Action*), **there remains significant work to be done before the right to inclusive education is enjoyed by all, or sadly even many, people with disabilities in Australia**. As recognised in para [4], inclusive education, and indeed even any education at all, remains an elusive goal for 'many millions' of people with disabilities throughout the world, including in Australia.

6. While the issue of appropriate support is touched upon throughout the draft general comment, ALHR proposes that the Committee strengthen the focus on the importance of support. For many people with disability, the provision of appropriate support is critical and can make a significant difference to their decision-making and capacity in their educational and other life outcomes. **ALHR respectfully submits that an explicit reference to the importance of embracing a supported decision-making approach would be appropriate and beneficial**. Para [46] of the general comment could be extended to specifically endorse a supported decision-making approach. Further, as the draft general comment notes, all support provided must be made available in a properly inclusive way, with support provided to assist teachers to properly teach all children, including children with disability. Any additional support that is made available, such as in the form of additional teacher's aides, must be specifically directed towards supplementing the teacher's work in this regard.

7. In Australia, progress has been made vis-à-vis our achievements with respect to inclusive education. For example, in the thirteen years from 2000 to 2013, Australia's Report Card documents some progress across a range of markers. Yet, as Jackson and

Wills conclude, we are at present only mediocre in our pragmatic translation of this commitment to inclusivity in the educational realm.¹ This is the case notwithstanding express commitment from the Australian government to inclusive education in a raft of laws and policies, including the Council of Australian Government's *National Disability Strategy* (2011), the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Education* (2005) made pursuant to that Act, the *Australian Curriculum*, the *Australian Professional Standards for Teachers*, the *National Quality Framework* and the *Early Years Learning Framework for Australia*.

8. **ALHR firmly agrees with the need for both theoretical and practical edification of teachers in disability and endorses the proposal to transform present special education units into resource centres for this purpose.** This would go some way to addressing concerns raised in the 2013 Inclusion Report Card that inadequate education and professional development for teachers and specialist support staff are key areas conflicting with the stated goal of inclusivity in education.²

9. **ALHR strongly endorses the proposal to ensure adequate funding.** This is central to the successful recognition of article 24. Lack of funding was also identified as a key issue requiring redress in the 2013 Inclusion Report Card³ and is critical to opportunities, facilities, training and support levels. It must be explicitly recognised that a lack of resources can be indicative of a lack of commitment from government treasury and the relevant departments and, in a resource-rich country such as Australia, should not be accepted as appropriate justification.⁴

10. ALHR also supports the express focus in the draft general comment on the importance of attitudinal issues. Attitudes have been identified as a key issue in the move towards inclusive education in Australia.⁵ **ALHR endorses the recognition in the draft general comment of the need to challenge stereotypes and pro-actively raise awareness.**

11. **ALHR proposes extending the application of the draft general comment to specifically include persons with cognitive impairment,** as well as those with physical, mental, intellectual and sensory impairments.

¹ Jackson, Robert and Wills, Darrell. *The 2013 inclusion report card: From failure to mediocrity*.

² Jackson, Robert and Wills, Darrell. *The 2013 inclusion report card: From failure to mediocrity*.

³ Jackson, Robert and Wills, Darrell. *The 2013 inclusion report card: From failure to mediocrity*.

⁴ For discussion of the Australian situation, see: <https://theconversation.com/australia-lags-behind-the-evidence-on-special-schools-41343>; and <http://www.theage.com.au/victoria/education-executives-get-bonuses-as-school-performance-declines-20151113-gkywjk.html>.

⁵ Department of Employment and Workplace Relations, 2012. *Report on the Review of Disability Standards for Education 2005*. Canberra: Commonwealth of Australia.

12. While we concur with the comments addressing issues of violence and abuse within the educational context, we consider that this section of the draft general comment is not sufficiently comprehensive to address human rights violations in this regard. In Australia, the application of Restrictive Practices on persons with an intellectual or cognitive disability is an issue of significant human rights concern, which is sanctioned by the permissive legislative regimes adopted by the state and territory governments. This is an issue that permeates all areas of service provision for people with disabilities, including in the educational context. In Australia, there have recently been horrific instances of the application of unspecified, unsanctioned and illegal use of Restrictive Practices to students within the educational setting. For example, recent allegations of physical and emotional abuse and deprivation of liberty of a child with disability include the caging of a 10 year old boy with autism in a Canberra classroom,⁶ locking a child with autism in a dark cupboard at a Newcastle school,⁷ tying a child with special needs to a chair with a seat belt,⁸ and constraining an autistic boy in a cell-like room.⁹ **We propose that the draft comment should provide explicit recognition that Restrictive Practices constitute cruel, inhuman and degrading treatment and should be prohibited.**

13. ALHR **agrees with the concern regarding the long-term institutionalisation of people with disabilities and the resulting social and community isolation that they suffer.** In this regard, we propose that State Parties be required to specifically rescind legislation such as the *Forensic Disability Act 2011* (Qld), which sanctions the indefinite detention of persons with an intellectual or cognitive disability.

14. ALHR agrees that it is imperative that effective, accessible, safe and enforceable complaints mechanisms be introduced as a means to challenge violations of the right to education. **We propose the establishment of a proactive enforcement mechanism, with an independent body charged with investigating of all educational institutions to ensure compliance with the inclusive educational standards.** In Australia, the relevant educational boards have not proved effective at creating a culture of compliance, nor have they effectively penalised conduct that breaches policies and procedures regarding inclusivity. Similarly, the bodies established to prosecute breaches of the relevant state and federal anti-discrimination laws have proved to be largely ineffective in creating a culture of respect for human rights and equality, largely due to the onus they place on aggrieved persons to make a complaint, the power imbalance that inevitably acts as a disincentive to lodging a complaint, the time and costs involved in pursuing a complaint and the lack of effective sanctions.

⁶ Rachel Browne, 'Children with autism caged and abused at school', *The Sydney Morning Herald* (online), 2 April 2015 <<http://www.smh.com.au/nsw/children-with-autism-caged-and-abused-at-school-20150331-1mbt48.html>>.

⁷ <http://mobile.abc.net.au/news/2015-12-16/police-investigate-schools-treatment-of-autistic-child/7032038?section=nsw>.

⁸ <http://www.scribd.com/doc/287809156/Parents-Claim-Special-Needs-Student-Tied-to-Chair-With-Seat-Bel>.

⁹ <http://www.scribd.com/doc/287338662/School-Puts-Autistic-Boy-in-Cell-Like-Room-QLD>.

15. ALHR concludes by reiterating **the dire need for Australia and all State Parties to recognise the right to inclusive education. The clarity which this draft general comment provides with respect to defining and acting on the right to inclusive education is welcome and very much needed.** ALHR hopes that the Committee shares concern for the need of greater emphasis on the need for support and the prohibition of restrictive practices so as to ensure that State Parties desist engaging in denying persons, including children with disabilities the fundamental human right to inclusive education.

16. Further information on ALHR's position on the draft general comment on article 24 can be obtained by contacting me via email at president@alhr.org.au .

Yours faithfully

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