



AUSTRALIAN  
LAWYERS  
FOR  
HUMAN RIGHTS™



# Inclusive Education

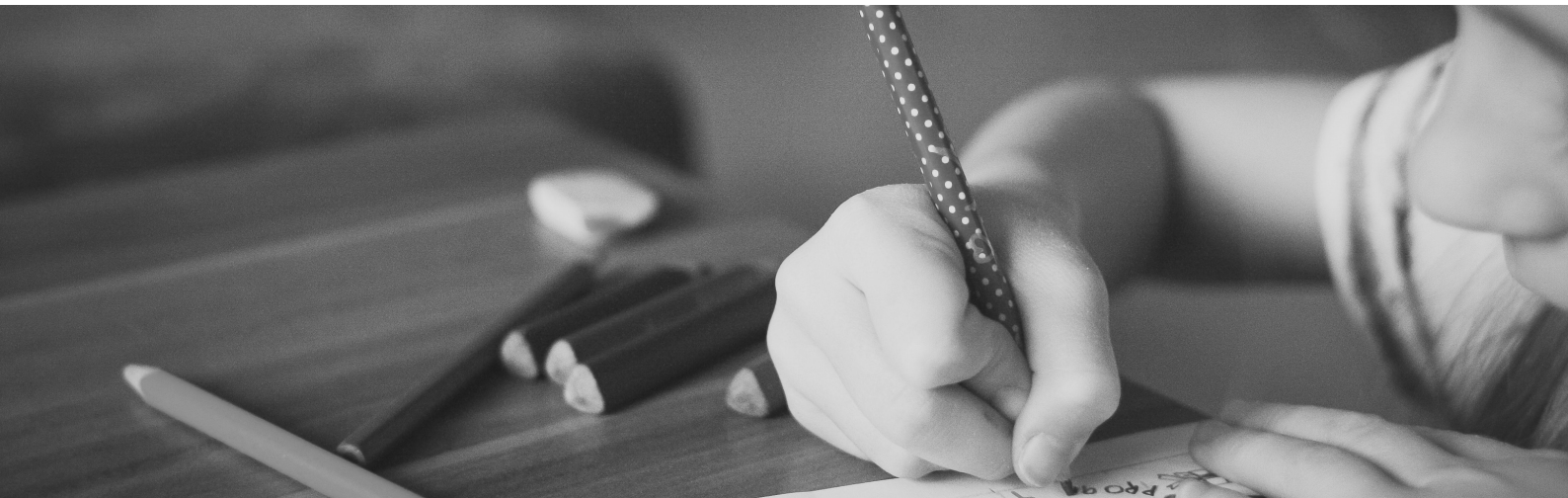
ALHR POSITION STATEMENT

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Disability Rights

November 2018

\* Image credit <http://d12.tingea.net/predrasude-o-inkluziji/>



## INTRODUCTION

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Australian Lawyers for Human Rights (ALHR) condemns the serious human rights violations that stem from denying children with disabilities the right to inclusive education.

Respect for human dignity is a cornerstone of international human rights standards and is recognised as a core value of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).[1] Yet Australia diminishes this principle through the segregation and limited inclusion of children with disabilities in educational settings.

Australia must adopt an inclusive approach that embraces core human rights principles such as respect for human dignity by reflecting and celebrating human diversity.

ALHR is alarmed that there have been incidents of abuse and violence against students with disabilities in Australian schools which have been publicly reported in recent years. Examples include Autistic children being caged in the back of classrooms and children being expelled for behaviour that arises as a result of their disability. Acts of abuse, violence and neglect of students with disability in Australia are condemned by ALHR.



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Further, it is documented that students with disability are subjected to systemic disadvantage and ongoing violation of their fundamental human rights when in institutionalised or segregated education. In 2016, the Committee for the Rights of People with Disabilities commented that “many millions of persons with disabilities continue to be denied a right to education, and for many more, education is available only in settings where they are isolated from their peers and receive an inferior quality of provision”.<sup>[2]</sup>

ALHR recognises that this comment applies to Australia, and calls for urgent change to every educational institution in Australia to remove isolation and barriers from children and young people with disability.

# WHAT IS INCLUSIVE EDUCATION?

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The right to inclusive education is enshrined in Article 24 of the CRPD. Inclusive education is central to achieving high-quality education outcomes for children with disabilities and for the development of inclusive and fair societies.[3] Inclusive education focuses on the full and effective participation of children with disabilities, especially those at risk of exclusion or marginalisation.

The United Nations Committee on the Rights of Persons with Disabilities (the Committee) defines inclusive education as involving a process of systemic reform embodying changes and modifications to overcome barriers and to provide an equitable and participatory learning environment for children with disabilities.[4] The Committee notes that placing children with disabilities in mainstream classrooms without accompanying systemic reform does not constitute inclusion, but is rather considered integration.[5] Integration does not guarantee the transition from segregation to inclusive education, where segregation is conceptualised as occurring where children with disabilities are educated in separate environments designed to respond to a particular impairment in isolation from students without disabilities.[6]

Inclusive education necessitates systemic reform embodying changes and modifications and content and teaching methods which overcome barriers and provide an equitable and participatory learning environment.



# SEGREGATED EDUCATION IN AUSTRALIA

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The use of separate environments to educate children with disabilities such as special schools is still prevalent in Australia.[7] Segregated education is damaging for children with disabilities and leads to low levels of academic achievement. Without access to inclusive education, students with disabilities have diminished prospects of gaining employment and learning the skills for meaningful civic participation.

International human rights standards require the removal of barriers to inclusion and the implementation of positive measures to accommodate and celebrate difference. Human diversity needs to be celebrated, and respect for students with disabilities promoted. ALHR is alarmed that students with disabilities are subjected to systemic disadvantage and ongoing violation of their fundamental human rights when in institutionalised or segregated education. It is the view of ALHR that all children with disabilities should be educated in inclusive educational settings and that all children with disabilities still in segregated education should be immediately transitioned to inclusive education in mainstream schools.

Children with disabilities are experiencing restraint and seclusion in the educational setting. The use of such practices is clearly unacceptable and is in violation of their CRPD rights. Consider an example of the restraint of a child with disabilities in his classroom: in NSW, a seven-

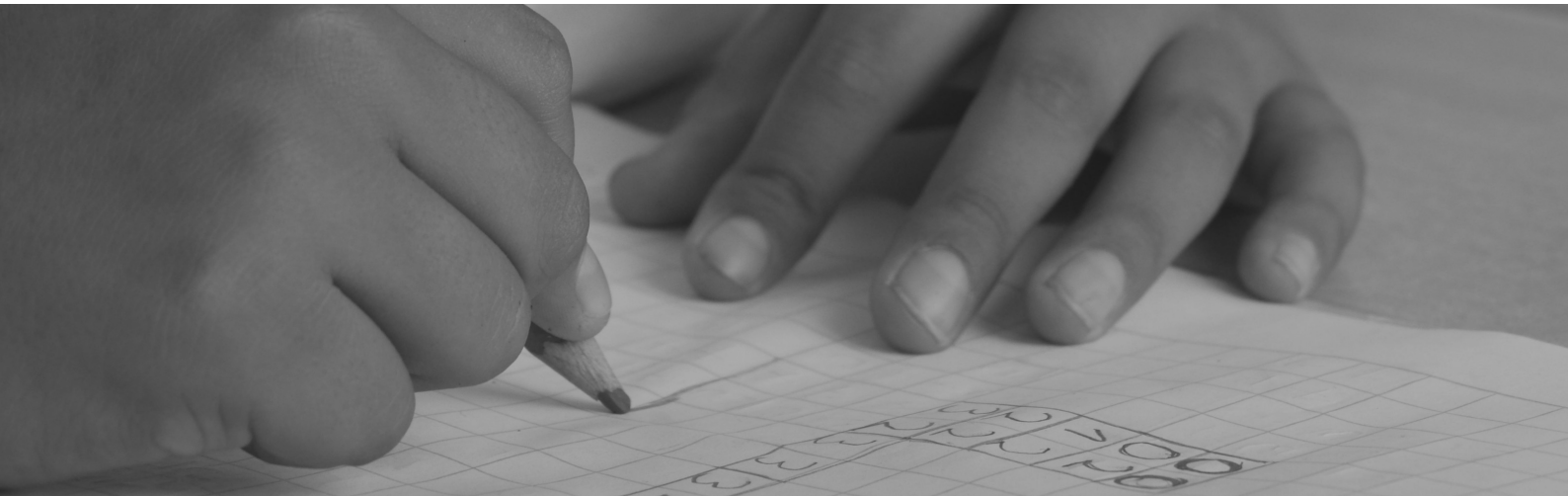
year-old boy with autism was tied to a restraining chair on a daily basis for hours each day.[8] To the horror of his mother, upon learning of her son's daily restraint and the restraint chair used, the school asked if she would prefer a more aesthetically pleasing restraint chair. An example of seclusion is seen in a case arising in the ACT. In an ACT primary school, a cage was purpose built to provide a 'safe space' for a ten-year-old boy with autism to 'calm down in'.[9] The cage was built at the principal's direction as the boy was considered a danger to staff and exhibited challenging behaviour.

In addition to the CRPD, Australia is a State part to the Convention on the Rights of the Child.[10] The four core guiding principles of the CRC are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. In ALHR's view the use of a purpose built cage in an educational setting constitutes a clear violation of Australia's international legal obligations pursuant to both the CRPD and the Convention on the Rights of the Child (CRC).[11]

ALHR calls for all restraint and seclusion of children with disabilities in educational settings to cease immediately. It is the view of ALHR that instead of using restraint and seclusion as behavioural management techniques, all educational support workers and teachers should be trained in de-escalation techniques to support children with disabilities who are at risk of exhibiting challenging behaviours in response to stimuli in the school setting.

Children and young people with disabilities in Australian schools are presently viewed as vulnerable and an exception to the norm. Disability should not be seen as a deficit whereby students with disability are viewed as requiring care under a medicalised model of disability. Rather, disability must be recognised as part of human diversity and an aspect of the human condition.

It is vital to recognise the role of the social environment in disabling children with impairments. The social model of disability locates the experience of disability in the social environment rather than the impairment.



# INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

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Article 24 of the CRPD provides the foundation human right of education which must be afforded by the Australian Government to all children and young people with disability.

Article 7 requires all State Parties to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with all other children. This demands that the Australian Government introduce legal and public policy reform to better include children with disabilities in all educational settings.

A failure to provide inclusive education for children and young people with disabilities in Australia results in students with disabilities having diminished prospects of gaining employment and learning the skills required for meaningful civic participation. Further, students with disabilities must be able to establish relationships with a broad range of peers.

The continued segregated education of children with disabilities is unacceptable under any circumstances and is a clear violation of

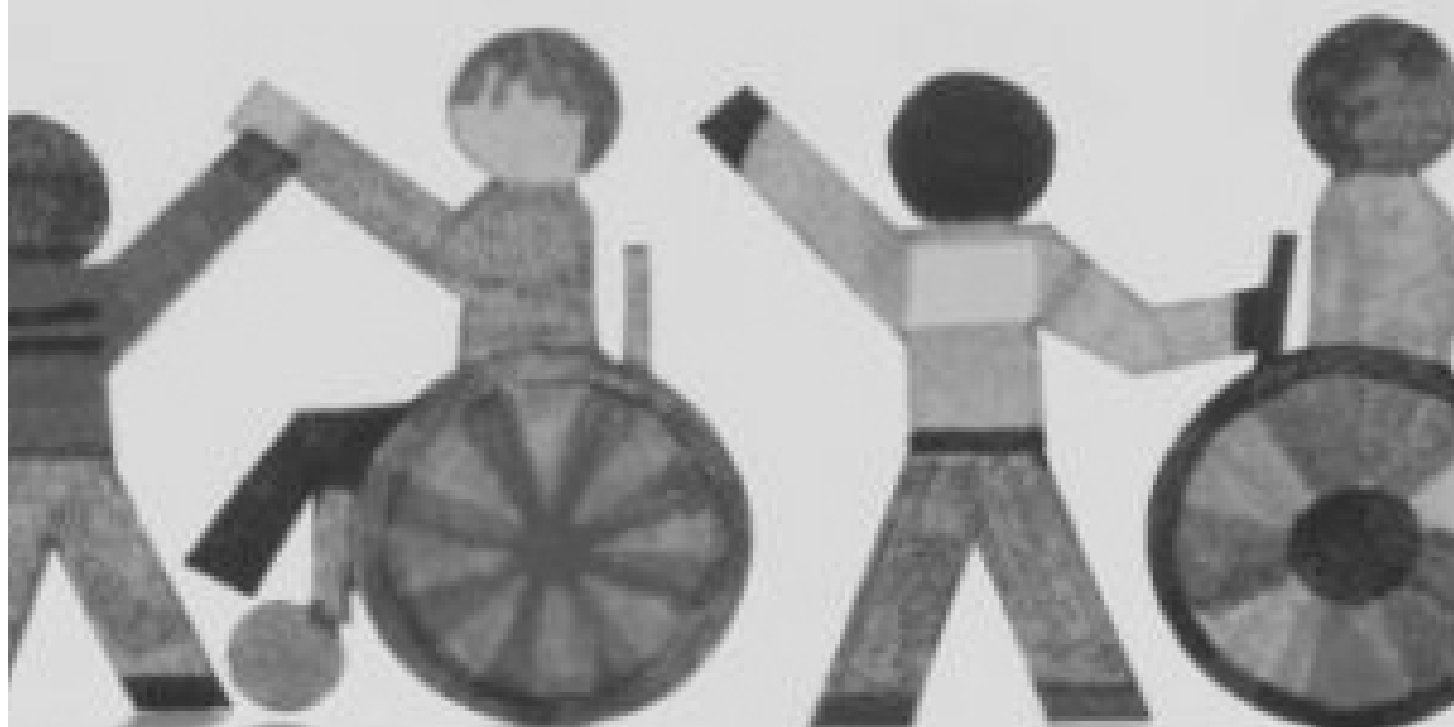
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human rights standards under the CRPD. The cost of exclusion is high, and leads to poor outcomes and missed opportunities in life for persons with disabilities. The move to inclusive education must not simply reposition special education in a mainstream school, but must herald real change where schools are equal and non-discriminatory.

ALHR strongly supports the need for domestic law reform to protect the human rights of all children with disabilities who are currently subjected to segregated education and to end the harmful practises into the future.

# RECOMMENDATIONS

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# RECOMMENDATIONS

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In order to prevent human rights violations and protect all children and young people with disabilities from being denied the right to education, ALHR calls on the Federal and State and Territory Governments to urgently:

1. Dismantle the dual system of education which segregates children with disabilities. The governments of Australia have an obligation to ensure an inclusive education system is available, without discrimination.
2. Enact Article 24 of the CRPD in domestic law to require inclusive education. In support of this, systemic change will be required including:
  - (a) adequate training for teachers in the participation of children with disabilities in classrooms such as training in augmentative and alternative modes of communication and behaviour support training,
  - (b) ensure physical and sensory access is available in all schools, and
  - (c) all children with disabilities must be integrated into mainstream classes and treated in a non-discriminatory manner and with respect.
3. Provide reasonable accommodations to children with disabilities to engage in the learning experience in inclusive classroom settings.



## ABOUT ALHR

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ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia.

ALHR has active and engaged National, State and Territory committees as well as specialist national thematic committees. ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international human rights law in Australia in order to:

- Promote and support lawyers' practice of human rights law in Australia;
- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Engage internationally to promote human rights and the rule of law.

Through the provision of training, education, publications, CLE courses, conferences, seminars and mentoring, ALHR assists members to continue to develop their knowledge of human rights law and incorporate human rights principles into their areas of legal practice in Australia.

## REFERENCES

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- [1] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).
- [2] Committee on the Rights of Persons with Disabilities General comment No. 4 (2016) CRPD/C/GC/4
- [3] UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on the right to inclusive education, UN Doc CRPD/C/GC/4 (25 November 2016).
- [4] UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on the right to inclusive education, UN Doc CRPD/C/GC/4 (25 November 2016) [11].
- [5] UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on the right to inclusive education, UN Doc CRPD/C/GC/4 (25 November 2016) [11].
- [6] UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on the right to inclusive education, UN Doc CRPD/C/GC/4 (25 November 2016) [11].
- [7] For example, while it is SA Department of Education policy that students with disabilities must be given the same opportunities for education as other students there are still 15 special schools, 92 special classes and 37 disability units operating in SA's education system.
- [8] <https://www.news.com.au/lifestyle/parenting/school-life/mother-gobsmacked-by-schools-treatment-of-her-autistic-son/news-story/e31f2157ba9909cf70596f050e7418c5>
- [9] <https://www.canberratimes.com.au/national/act/child-reportedly-contained-in-cagelike-structure-at-act-primary-school-20150402-1mdj0b.html>
- [10] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3
- [11] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3



## INCLUSIVE EDUCATION ALHR DISABILITY RIGHTS POSITION STATEMENT

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