Further Supplementary Submission to the Senate Community Affairs Committee

Senate Inquiry into the Abuse of People with Disabilities

REPORT ON NEW DET RESTRICTIVE PRACTICES/BEHAVIOUR GUIDELINES

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Introduction

1. In the week of 5 October 2015, the Victorian Department of Education and Training ("DET") brought out a suite of policies and guidelines relating to restrictive practices and behaviour support. They can be found at http://www.education.vic.gov.au/school/principals/participation/Pages/physicalintervention.aspx#link62.

2. The writer has placed some of the sections into Word documents for ease of reference.

3. The guidelines represent online training materials which require teachers, if they wish to obtain a comprehensive understanding of what DET believe should (or in some cases, may) occur in relation to restrictive practices, to switch back and forth between approximately 40 web pages and different websites. The majority of the information provides options rather than mandatory requirements. This is the hallmark of DET policy and procedures, rendering many useful guidelines redundant.

4. The guidelines cover a range of topics. There have been some improvements and some deterioration in the rights of students with disabilities to be free from violence, abuse, neglect and inhumane and degrading treatment.

5. The changes increase the risks of legal action to be taken against individual teachers and Principals. They increase the workload for teachers substantially if they are to fulfil their new duties professionally (putting aside that they are unqualified to undertake the new behaviour analytical tasks they are charged with) and require teachers to become quasi-behaviour analysts, leaving them responsible for the effective mitigation of challenging behaviours.

Improvements in summary

6. Improvements include:
   - Certain types of dangerous restraint holds have been banned.
   - DET have finally recognised the importance of Functional Behaviour Assessments as being effective tools in addressing challenging behaviours.

Deterioration in summary

7. Deteriorations include:

   - Seclusion of students is now formally endorsed by DET.
   - The seclusion of students is allowed in rooms no matter their suitability for that purpose, how safe they are, or whether or not they allow for monitoring/observations.
   - General lack of guidance for restraint/seclusion remains, however there is more flexibility to use restraint/seclusion.

- Teachers are being encouraged to diagnose the function of challenging behaviours and write behaviour intervention plans to effectively address those behaviours.
- The terms "violent", "aggressive" and "dangerous" are prolifically used throughout the guidelines as supposed to "challenging" behaviours.

Improvements

Certain types of dangerous restraint holds have been banned

8. The new Restraint Policy is attached as **Attachment A**. The previous restraint policy is attached as **Attachment B**.

9. The new restraint policy contains the following:

   "*Any restraint which covers the student's mouth or nose, in any way restricts breathing, takes the student to the ground into the prone or supine position, involves the hyperextension of joints, or application of pressure to the neck, chest or joints, must not be used.*"

   As these restraint holds were being used, their prohibition is welcome.

DET have finally recognised the importance of Functional Behaviour Assessments as being effective tools to address challenging behaviours

10. The evidence base around Functional Behaviour Assessments has been available for many years. Functional Behaviour Assessments have not been vigourously promoted as an evidence based response to challenging behaviours by DET (formerly DEECD) until now.

Deterioration

Seclusion of students is now formally endorsed by DET

11. Prior to the new restraint policy, while seclusion was commonly used, it was against DET policy (such policy, pursuant to common DET practice, being unwritten). The writer refers to the Victorian Equal Opportunity and Human Rights Commission "Held Back" Report[1] at page 120, which states:

    "Although the Restraint of Student Policy is silent on seclusion, DEECD has informed the Commission that use of seclusion is a clear breach of policy."

12. Not only has DET rejected VEOHRC's advice to prohibit seclusion, it has explicitly now endorsed seclusion as an option. VEOHRC's position at page 180 is represented below:

[1] 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

"On the face of it, the Commission cannot see any circumstances where seclusion is a reasonable action in a school environment or where a child's dignity can be retained in such circumstances."

13. The writer refers to paragraphs 17 and 18 of her first submission to the Committee relating to the Principals Association of Special Schools.

    "PASS, in their position paper curiously entitled "*PASS Position Paper on **Positive** Management Strategies*" [emphasis added], express teachers' concerns "*regarding the advice from DEECD which infers that having the door "closed" contravenes their Human Rights.*"[2]

    In fact, legal advice from the DET Legal Department to schools, according to PASS, indicate "*that if a student in time out is unable to remove him/herself of his/her own volition then time out with the door "closed" can be construed as illegal imprisonment in terms of common law*."[3]"

14. So now we have DET approving an action that its own legal Department has already suggested could constitute illegal imprisonment.

15. The writer submits that the introduction of seclusion as a bona fide strategy to address challenging behaviours is a negligent and dangerous new development which should be vigourously opposed by the community.

The seclusion of students is allowed in rooms no matter what they contain, how safe they are, or whether or not they allow for monitoring/observations.

16. Firstly, it should be noted that DET have defined seclusion in a more restricted way then the Australian Psychological Society **(Attachment C)**. The Australian Psychological Society define seclusion as:

    *Seclusion involves solitary confinement of a person in a room or area (e.g., garden) from which their exit is prevented by a barrier or another person. **Seclusion includes situations in which people believe they cannot or should not leave an area without permission**.*[4]

    DET's definition leaves out the sentence in bold.

17. If it were not for the fact that DET have now formally embraced and endorsed seclusion as an appropriate means of responding to challenging behaviours, the following new addition to the new Restraint Policy (p 2) would be welcomed.

    "*Rooms or areas designed specifically for the purpose of seclusion and which are used solely or primarily for the purpose of seclusion are not permitted in Victorian government schools.*"

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[2] See Attachment 4. PASS Position Paper on Positive Management Strategies June 2011 p4
[3] PASS Position Paper on Positive Management Strategies June 2011 p3
[4] 'Evidence-based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector'p11 (see writer's first submission for document)

However this not been the case, this now puts children with disabilities exhibiting challenging behaviours at greater risk than they were before.

18. If the community cannot stop DET staff subjecting children with disabilities to seclusion, and they will be secluding children, (in defiance of best practice and human rights legislation), then rooms "designed specifically for the purpose of seclusion" are exactly where children should be secluded.

19. In order that there is no confusion, the writer submits that seclusion should not be used in Victorian schools. However, if school staff will be subjecting children with disabilities to seclusion then that seclusion should be highly regulated. For the very few cases where people with disabilities are exhibiting such extreme behaviours that seclusion must occur, seclusion when overseen by professionals, is highly controlled.

20. Rooms where people with disabilities are secluded due to challenging behaviours need to be established professionally, including the following considerations as an example:

- controlled temperature
- adequate ventilation
- window made of strengthened glass
- video camera for monitoring

Now we have DET formally giving the green light to seclusion, but allowing seclusion in any room, no matter how dangerous.

21. Interestingly, not included in the new Restraint Policy, but in another area of the website (‘Responding to Violent and Dangerous Behaviours of Concern’- **Attachment D**) it is stated that:

Every instance of restraint or seclusion should be visually monitored throughout to ensure appropriateness and safety.

22. In the event that the staff member seeking guidance on seclusion moves away from the policy on restraint and seclusion and sees this particular section, they may then be inclined to ask themselves the following questions:

- Without a purpose-built seclusion room, how are they going to monitor the student being subjected to seclusion?
- If they are secluding students whose behaviours are temporarily uncontrollable in a non-purpose-built seclusion room with regular windows, could this not lead to self injury through breaking the glass?
- If there is no purpose-built seclusion room with video camera monitoring, what is the other alternative to either breaching the policy or putting the students in a potentially dangerous and harmful situation.

23. It should be noted that given the vagueness of DET guidelines, staff actions of seclusion will easily fall within those guidelines if a child with Autism Spectrum

Disorder, for example, is having a "meltdown". Given meltdowns can include temporary loss of physical and emotional control due to being overwhelmed, to place a child in any room, no matter how unsuitable/dangerous, will most likely cause more harm than was possible before seclusion was endorsed.

24. The following examples of DET staff having subjected students with disabilities to danger through inappropriate seclusion (before seclusion was endorsed) give guidance as to what we can now expect.

25. From paragraph 40 of my first submission to the Senate.

Wantirna Heights School admitted in a recent court case that when one of their students demonstrated challenging behaviours they placed him in the classroom bathroom/toilets, at times with the door shut[5], but in any event not allowing him to leave. This again highlights the inherent risk associated with an absence of regulation resulting in ignorant staff placing a child who is demonstrate challenging behaviours in a room with hard and sharp surfaces. The stupidity and recklessness of such an action is hard to understand. There was no documentation, and no parental consent sought.

26. From the witness statement[6] of the parent of a young student with Autism Spectrum Disorder in relation to Wendouree Primary School.

Throughout 2012, the First Aid Room was used as a seclusion room for xxxx. It had cupboards, shelving, a sink, medicine, supplies, a refrigerator and a filing cabinet in it. Sometimes when xxx was moved to the room, a teacher, Mr xxx, would be called to block the doorway with the filing cabinet so that xxxx could not leave the room or at least believed that he could not leave the room.

27. And from the same witness statement but referring to Alfredton Primary School.

The store room had a filing cabinet, shelving and school equipment on the shelving. It had heavy objects, objects with sharp and hard edges and was completely unsafe to place an autistic child who was having a meltdown.

On 20 October 2011, I was called to the school to pick up xxxx. xxx had been called also. I found xxx had been shut in the school storeroom, on his own; shelves and equipment had been overturned and a filing cabinet almost pushed over.

His weighted blanked would be soiled and indeed, he had used it on 27th October to wipe himself after soiling in the store room.

[5] *K v State of Victoria [2013] FCA 1398*

[6] *HP obo HR v State of Victoria A34/2013*

28. As can be seen by the above examples, these are the sorts of experiences of seclusion students with disabilities have been having prior to the recent endorsement of seclusion by DET. It is hard to imagine anything more negligent than secluding a child in a first aid room where there would no doubt be scissors and other sharp instruments.

29. The length of time students have been secluded is clearly unacceptable when they are going to the toilet in the room they are secluded in.

30. The above scenarios would be permissible under the new guidelines. There is no guidance about the maximum period of time a student can be secluded (or much else).

General lack of guidance for restraint/seclusion remain, however more flexibility to use restraint/seclusion

31. The recommendations of VEOHRC around the *Education and Training Reform Act 2006*[7], being that the Act should be amended to transfer regulation of restrictive practices to the jurisdiction of the Office of Professional Practice ("OPP"), formerly the Office of the Senior Practitioner, continue to be rejected by DET. Instead, DET continues to rely on Regulation 15, the dangerously broad single sentence that is the overall "get out of jail free" card for any staff member taking almost any action against a child with challenging behaviours.

32. The usual DET catchall descriptions of when a staff member can use restraint or seclusion continue to apply without explicit direction that gives meaningful guidance to staff. For example on the second page of the new "Restraint of Student" policy in the second and third paragraphs, the following sentence provides subjective statements which are unhelpful to staff:

    "*As with physical restraint, seclusion should only be used when it is immediately required to protect the safety of the student or any other person, as permitted by Regulation 15.*

    The decision about whether to use physical restraint or seclusion rests with the ***professional judgement of the staff membe****r/s involved, who will need to take into account both the duty of care to their students, the right to protect themselves from harm and obligations under the Charter of Human Rights and Responsibilities Act 2006 (Charter)."* [Emphasis added]

33. A reminder of Regulation 15:
    "*A member of staff of a government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student, or any other person.*"

[7] "Held Back" p 124

34. All guidance returns to Regulation 15, a Regulation so inadequate that Victoria's VEOHRC recommended DET's responsibilities for restrictive practices be entirely removed from them.

35. Examples of the subjective interpretations that need to take place from these few paragraphs, but that are repeated a number of times in the new policy/guidelines are below.

"*required to protect the safety of the student or any other person…."*
"restrain a student of the school from acts or behaviour dangerous…"
"protect themselves from harm…."

36. As decisions made about restrictive practices are going to rest with the "*professional judgement of the staff member*", restraint is virtually unregulated apart from the new banned specific restraint holds.

37. The new guidelines allow a teacher to subject a child to restraint or seclusion on the basis that they ***may*** throw a chair at another child and cause serious injury, or at the other end of the spectrum, throw a pencil at them. As long as a teacher can say that their belief was that someone would be harmed, either example applies, bearing in mind that the definition of harm includes "hurt".

38. DET do not give any examples of what level of harm or hurt they believe warrants restraint and seclusion, leaving the decision entirely up to the teacher.

39. A further loss of protection for students against restraint and seclusion can be seen in other changes to the Restraint of Student policy p2. New changes to the Restraint of Student policy are added in bold. These are under the heading "*When Restraint Should Not Be Used*" - to respond to:

a student's refusal to comply ***with a direction, unless that refusal to comply creates an imminent risk to the safety of the student or another person***

a student leaving the classroom/school without permission, ***unless that conduct causes an imminent risk to the safety of the student or another person***

verbal threats ***of harm*** *from a student,* ***except where there is a reasonable belief that the threat will be immediately enacted***

property destruction caused by the student ***unless that destruction is placing any person at immediate risk of harm.***

40. As can be seen, the additions allow more flexibility to use restraint and seclusion. Staff can act within DET guidelines by stating, for example, the following:

a) a student, when they were leaving school, was near a road and may have run out in front of the car;
b) a student said they will hurt another person;
c) a student knocks a computer from a desk and a teacher believes another student could get hurt;

41. On the other hand, all of the above scenarios could be perfectly safe.

a) the student leaving the school could be 16 years old and there is no past evidence that would indicate they would run onto the road;
b) people when they are upset may often threaten to hurt someone or themselves without having the slightest intention of doing so;
c) a student can knock a computer from a desk and there is no risk of harm to another person - other students could be told to leave the room immediately any sign of agitation takes place, as an alternative.

42. There is no guidance as to what level of harm or what level of risk is required for a teacher to use restraint or seclusion.

43. When a staff member has to justify restraint and seclusion of a student, it is easy for them to say that their belief was that a certain outcome may have occurred if they did not restrain or seclude.

44. Further guidelines create more confusion on p1.

"School staff may only use physical restraint on the student when it is immediately required to protect the safety of the student or any other person noting that:

- *for physical restraint to be immediately required there should be no less restrictive action that could be taken to avert the danger in the circumstances*
- *staff should use the minimum force needed to protect against the danger of harm*
- *staff should apply the physical restraint for the minimum duration required and remove it once the danger has passed"*

45. Questions that are raised but not answered include the following:

What are the "less restrictive actions" that could be taken to avert the danger?
What is the "minimum force" needed?
With a number of restraint holds now banned, which are acceptable?
How do staff know how to restrain students?

46. The previous Restraint Policy under the heading "How to Restrain" (which actually did not at all specify to staff how to restrain) included the following:

Only staff trained in using restraint should use restraint on a student.

47. This has now been removed. While DET when challenged abandoned this part of the policy anyway, it's inclusion at least implied that a lack of training was undesirable. From the writer's first submission to the Committee at Paragraph 50:

"It would be possible, of course, for a government department to interpret the word "should" as "must". However to ensure there is no misapprehension of how DET define this word, when the Restraint Policy has been challenged regarding the training of staff who restrained a child who had been subjected to repeated restraint in her short school life, Regional Director Ms Jeanette Nagorcka stated the following:

"*I am advised by principal xxxxxxxxx that Ms xxxxxxxx does not have specific training in relation to student restraint and note that such training is not required for teachers in Victoria.*""

48. Despite this, the inclusion of a reference to training implied that this may be a preferred state of affairs. Now we have restraint allowed, certain holds banned, and yet in the blink of an eye untrained staff are expected to think about exactly how they can restrain a student without transgressing the prohibitions, and act within seconds. One could be forgiven for thinking that this is an impossible task and fraught with danger for both staff and students.

49. Further unhelpful "guidance" remains in the new Restraint Policy under the "How to Restrain" section. The policy excerpts are in italics, the writer's additions underlined.

Staff should ensure the type of restraint used is consistent with a student's individual needs and circumstances, including:

- *the age/size of the student.* <u>What does this mean? What "types" of restraint should staff be using? What is an appropriate "type" of restraint for a certain age? What is an appropriate "type" of restraint for a certain size?</u>

- *gender of the student.* <u>What does this mean? What is an appropriate "type" of restraint for a female? What is an appropriate "type" of restraint for a male?</u>

- *any impairment of the student e.g. physical, intellectual, neurological, behavioural, sensory (visual or hearing), or communication.* <u>What does this mean? Which disabilities should be paired with which "types" of restraint? What has the student's communication got to do with what "type" of restraint should be used?</u>

- *any mental or psychological conditions of the student, including any experience of trauma.* <u>What does this mean? Given that restraint and seclusion traumatise students, how are staff meant to be taking into account previous trauma while they are further traumatising them? Which "types" of restraint should be paired with particular "mental or psychological conditions"?</u>

- *any other medical conditions of the student.* What does this mean? Which "medical conditions" should be paired with which "types" of restraint? Should some medical conditions mean that restraint or seclusion should not be used? If so, which are they?

- *the likely response of the student.* What does this mean? What other likely response could there be to physical restraint and seclusion but trauma? Which "likely responses" indicate that restraint and seclusion should not be used? Are there some "likely responses" that indicate a specific "type" of restraint? If so, what are those responses and what are those "types" of restraint?

- *the environment in which the restraint is taking place.* What does this mean? How do the staff take into account the environment? Are there some environments which should be paired with certain "types" of restraint? If so, what are the environments and what are those "types" of restraint? Are there some environments which suggest restraint and seclusion should not be used? If so, what are those environments?

50. The guidelines are embarrassing. Worse, they leave all the decision making to staff who have no expertise in this area.

51. It is worth revisiting what can happen to children with disabilities who are being subjected to restraint and seclusion. The writer refers to a 2009 article entitled "Restraint, Seclusion of Students Attracting New Scrutiny" **(Attachment E)** referring to restraint and seclusion practices in schools in the USA. Of note particularly, is the report of the death of Jonathan King, the 13-year-old boy who hanged himself while being secluded in a school. Without the ability to observe every minute of a person subjected to seclusion, and when locking a student in a room which may have equipment that is able to be used to harm oneself, seclusion becomes more than traumatic - it becomes life-threatening.

52. To highlight the inadequacy of DET restraint and seclusion guidance, a comparison can be made with the 33 page Queensland Government 'Restrictive Practices for General Disability Services' document **(Attachment F) ,** specifically page 19, which sets out the consent pathways including requirement for Tribunal approval for seclusion. While the writer is not suggesting that this procedure contains all the elements of best practice, it highlights once more, the level of protection adults with disabilities in Australia receive. Laws in other states of Australia give similar protection to adults with disabilities.

Teachers are being encouraged to diagnose the function of challenging behaviours and write intervention plans to effectively address those behaviours

53. The writer refers to the "Prevention and Early Intervention" document **(Attachment G).** Clearly, prevention and early intervention are key, and if performed competently and professionally, can ensure that restraint and seclusion are not needed.

54. It is important to note that the document does not actually require any action. It simply discusses what could occur. The words "could", "should" and "may" run throughout the document. Therefore adherence to the guidelines can occur by doing little or nothing.

55. The document highlights the importance of Student Support Groups which have always been a part of DET guidelines. The section is represented below:

Convene a Student Support Group (SSG)

Convening a SSG will ensure that parents and teaching and wellbeing staff are working in partnership to address behavioural issues. The role of the SSG is to oversee and assist with the development of an Individual Education Plan, which will include when appropriate, a Behaviour Support Plan.

56. The difficulties with this section, are not that anything within it is disadvantageous or inappropriate, in fact quite the opposite. The difficulty is that the DET position is that Student Support Group guidelines do not need to be followed, Individual Education Plans do not need to be in any form or even physically exist, and nor do Behaviour Support Plans (the writer refers to her first submission paragraphs 96-104). Unless DET change their position on this, these supports, while excellent, will remain meaningless.

57. At any time when a parent or advocate attempts to call DET to account in relation to any guideline and its content, such content is quickly disowned. An example of a number of relevant DET guidelines set out above being abandoned can be found in just one letter from DET Regional Director Peter Greenwell to a parent attempting to hold DET accountable.[8]

58. In relation to the alleged value of parents, the Student Support Group Guidelines state (and have stated in the past), this:

> *Parent/guardian/carer(s) play a **vital** role in the Student Support Group. They have a holistic understanding of the child and provide ongoing involvement in their education. **Parent/guardian/ carer(s) are often in the best position to provide information on the effectiveness and practicality of particular strategies and programs**. They provide knowledge and experience of previous events that may influence programming decisions. Parent/guardian/carer(s) are able to contribute to the goals and strategies that will support the education of their child, including their transition to further education, training and employment.*[9]

[8] Letter Peter Greenwell to parent 29 January 2015
[9] SSG Guidelines 2015 p6

When a parent made a complaint about Monash SDS whose Principal unilaterally and deliberately altered the time of Student Support Group meetings to a time they knew that the parent could not attend, Mr Greenwell said this:

*"While it is **preferable** for parents to be in attendance at all SSG meetings because they can contribute valuable knowledge of the student, where a parent does not or cannot attend SSGs there are other ways that parents can be consulted about adjustments and planning for the educational and social needs of the child. I understand that minutes of SSG meetings were forwarded to you for your input and feedback."*

So while the Student Support Group Guidelines stressed that a parent's role is "vital", suddenly, when called to account, the parent's attendance at the Student Support Group is simply "preferable" and the fact that the Principal changed the times of the meeting, knowing that the parent could not attend (ever again), is endorsed.

59. In relation to Individual Education Plans, the same parent brought to the attention of Mr Greenwell that there were no strategies in her son's plan, a vital component one would have thought. Particularly as Student Support Group Guidelines state:

To maximise opportunities for students with disabilities to succeed, policy and practice within schools should reflect:

- *collaboration between teachers and students, parent/guardian/carer(s), education and health professionals to develop agreed understandings and responses to a student's behaviours, needs, communication skills and learning needs*
- *curriculum-based Personalised Learning and Support Planning informed by a Student Support Group that set out the student's short-term and long-term learning goals based on the Australian Curriculum in Victoria (AusVELS), Abilities Based Learning and Education Support (ABLES) assessments and other relevant information*
- ***teaching and learning strategies** that take account of a student's background, experiences, individual personality and individual goals*[10] [emphasis added]

Mr Greenwell had this to say:

*The Department's guidelines are **guidelines** for use and adaptation by educational settings. At Monash SDS, a special school setting, strategies for teaching the goals identified are included in teachers' detailed work programs.*[Emphasis from Mr Greenwell]

[10] Student Support Group Guidelines 2015 p4

60. Therefore, unless there is a change in DET policy in relation to their policies and guidelines, and this is certainly not heralded in their new documents, then the prevention and early detection sections are unhelpful.

61. However it is the suggestion that staff should be undertaking Functional Behaviour Assessments that should be of most concern to parents and teachers.

Conduct a Functional Behaviour Assessment (FBA)

These assessments provide a systematic way to understand why behaviours are occurring, their triggers and antecedents, and the strategies that may be useful in addressing these. FBAs may involve a range of approaches based upon the student's individual needs, presentation and context.

62. Of concern is the reference to Department of Health And Human Services (DHHS) documents, one of which is entitled "Positive Solutions in Practice: getting it right from the start: the value of good assessment" **(Attachment H).**

63. Before proceeding it is important to raise the previously mentioned recommendations from VEOHRC, to transfer regulation of restraint to the OPP. It is the *Disability Act 2006* that regulates restraint, not the OPP in and of itself. The OPP only has powers pursuant to the Act. Transferring regulation of restraint and seclusion in Victorian schools to the OPP, by changing statute, has not occurred. The OPP, while a hub of information about best practice, has failed to address abuse in disability services, much of it linked with restrictive practices. The OPP, is in fact, DHHS. Therefore the OPP has a conflict of interest. Even taking that into consideration, it is the best placed statutory authority currently in existence to deal with restrictive practices and certainly superior in every way to DET.

64. However even the OPP does not espouse practices and policy that reflect the high level of that which is evident in other countries where qualifications in behaviour analysis are the basic level expected when dealing with challenging behaviours.

65. The DET website takes staff to the OPP Document entitled *"Positive Solutions in Practice: Getting it right from the start: The value of good assessment Issue No.3, 2008*". It includes the following on the first page:

While many assessments can only be given by psychologists, functional behavioural assessment (FBA) is one kind of assessment that can be completed by disability support workers, parents and anyone who has received ***some*** *training in FBA. [emphasis added]*

66. It is difficult to ascertain the evidence behind this claim. Firstly, there is no indication as to what "some training" might involve, and the qualifications of

the person providing that training. While it is possible that teachers may be able to learn some basic tenets behind FBAs, it should only be assumed that teachers (putting aside their willingness, ability and time to undertake an FBA) would only be able to, or should only attempt to, address mild behaviours. Severe challenging behaviour and long stand challenging behaviours are required to be addressed by highly qualified and trained people.

67. It is unfortunate that in this information sheet the OPP include the case study of a woman named "Rose" on page 1 whose behaviour is to lie down in the middle of the road and wait for oncoming traffic. In other words, Rose has a behaviour that puts her life at risk and the OPP are suggesting that anyone who has received "some training" should be able to begin a behaviour analytical process to address this behaviour.

68. The example stretches incredulity for the simple fact that "Rose" is able to articulate the function of her behaviour and tells her carers exactly what the function is, resulting in an FBA being completely unnecessary (p1).

When asked why Rose put herself and others at risk by lying on the road in front of oncoming traffic "she said: "To get out of a situation I don't want to be in".

69. The reason an FBA is required is because the person with a disability <u>can't</u> communicate what the function of their behaviour is, and this is particularly the case for children.

70. At the very end of the document, under the heading "some cautionary notes" the statement below is included:

*An FBA that is **done properly** can lead to improvements in the quality of life for people with a disability who show behaviours of concern.*[3] *A good FBA is based on careful observation, not opinion or intuition. **One solution is to obtain training in FBA.***[emphasis added]

71. It is hard to understand what the other solutions would be.

72. At the bottom of the document, almost as an afterthought, the OPP states:

A referral to an experienced behaviour support practitioner is recommended if additional support is required in completing an FBA.

73. There is no indication as to what an "experienced behaviour support practitioner" actually is, and it is not clear if the individual being encouraged to complete the FBA will know if they need additional support.

74. The encouragement of unqualified people to undertake FBAs, is in the writer's opinion, reckless. Students in schools can and do exhibit challenging behaviours such as self injury, serious injury to others and absconding behaviours that put them at risk. As the OPP and many respected organisations would note, an FBA that is "done properly" has a high success

rate. To put teachers in a position where they are responsible for analysing behaviours and writing what in effect is a treatment plan for behaviours leaves them open to legal action and more importantly makes them responsible for an ineffective treatment/behaviour plan which could result in self injury, injury to others or death as included in the case study from the OPP.

75. It is important to revisit the qualifications of teachers. The writer quotes from her substantive submission to the Committee at paragraph 7:

Special Schools, despite the clear limitations of teacher training (and most teachers in special schools do not have special education training), believe their staff have the expertise to undertake Functional Behaviour Assessments, even without training from a professional whose expertise is behaviour analysis.[11] *As a result, adults who have not even mastered the skills to teach basic subjects like English* [12]*, and who are required to have some of the lowest ATAR scores to enter university* [13] *are responsible for, and claiming to be experts in, children with complex disabilities and managing challenging behaviours.*

76. It is clear that putting the OPP and its concerning encouragement of unqualified people undertaking FBAs aside, DET are completely unaware of what sort of qualifications are required to undertake an FBA.

Case Study 1. Parents in North-West Victoria Region requested an FBA for their daughter who had been subjected to restraint at a mainstream primary school. North-West Victoria Regional Office recommended a "behaviour analyst" who performed a Functional Behaviour Assessment. The "behaviour analyst" refused to answer questions about the report from both the child's advocate and their parents. When asked to provide qualifications, the "behaviour analyst" put forward a Bachelor of Arts in Behavioural Science. When contacted, the relevant University said this:

[11] Marnebek School, Cranbourne, Victoria evidence given at VCAT 2012 HL v State of Victoria & Karen Dauncey A64/2013

[12] *Asia-Pacific Journal of Teacher Education, 33*(1), 65-76
Australian Journal of Learning Disabilities, 10(1), 3-8
Future directions in literacy: International conversations 2007. University of Sydney
From New Directions to Action:World class teaching and school leadership Department of Education and Early Childhood Development. (2013).
Issues paper - Education and Training Workforce: Schools Workforce Study Australian Government Productivity Commission. (2011).

[13] "*The average ATAR (tertiary entrance rank) for education courses in Victoria was 61.9 this year, dropping as low as 40.25. This compares to an ATAR of 98.95 for biomedicine at Melbourne University and 98 for law at Monash University*".Topsfield, J. (2014). Graduate teachers not up to scratch: State government The Age, 10/7/2014
Teacher quality: getting it right. Voice, 9(3). Dinham, S. (2013).
http://www.voice.unimelb.edu.au/volume-9/number- 3/teacher-quality-getting-it-right

"*Nothing in the degree would qualify a person to do functional behavioral assessment and analysis*."

Not only had DET not bothered to even check if the person they were contracting was capable of doing the job, but the parents have been advised that he is training DET staff in the region.
2015

77. It is perhaps a reflection on the status of people with disabilities in Australia, that organisations such as DET indicate that in their view, anyone, no matter how unqualified and lacking in expertise, can be responsible for the mitigation of behaviours that they claim are "violent and aggressive", often culminating in violence, restraint and seclusion responses from staff.

78. The challenge for schools, however, even if they did decide that the task was beyond them, is that they have insufficient resources to bring in the expertise they need. The type of multidisciplinary team that should be having input into the addressing of complex and challenging behaviours is already restricted as set out by the Victorian Equal Opportunity and Human Rights Commission main findings:

    Despite considerable investment by the Victorian Government, there continues to be significant unmet need for support services for students with disabilities, including integration aides, occupational therapists, speech therapists, other specialist staff and assistive technology. If these are not provided when required, students with disabilities cannot participate effectively in education.[14]

79. There has been no announcement of extra funding being provided to schools specifically to assist them in obtaining Functional Behaviour Assessments and the subsequent developing, and ongoing monitoring and evaluation of a Behaviour Plan, to the writer's knowledge. Optional on line training packages are not going to substitute expert evidence-based practice from appropriately qualified personnel.

80. In terms of the principles and practices regarding restraint, seclusion and behaviour assessment/analysis, the writer submits that it will assist the Committee to have an understanding of other policies and practices of professional organisations. A small sample is attached. Two of these organisations are based in the USA, which is decades ahead of Australia (as are other countries), in this area. However the Australian Psychological Society also indicates that a high level of professionalism and expertise is required to address challenging behaviours. All emphasis added by the writer.

[14] Held Back-Experiences of Students with Disabilities in Victorian Schools 2012 p 60

81. Association for Behaviour Analysis International, Position Statement on Restraint and Seclusion (**Attachment I**).[15]

Although many persons with severe behavior problems can be effectively treated without the use of any restrictive interventions, restraint may be necessary on some rare occasions with ***meticulous clinical oversight and controls****. In addition, a carefully planned and monitored use of time-out from reinforcement can be acceptable under restricted circumstances. Seclusion is sometimes necessary or needed, but behavior analysts would support* ***only the most highly monitored and ethical practices*** *associated with such use, to be detailed below.*p103

GUIDING PRINCIPLES
The welfare of the individual served is the highest priority. Clinical decisions should be made based on the ***professional judgment of a duly formed treatment team that demonstrates knowledge of the broad research base and best practice****. Included in this process are the individuals being served and their legal guardians. The team should be informed by the research literature, and should determine that any procedure used is in that person's best interests.*

We support the use of a planned time-out treatment or safety intervention that ***conforms to evidence-based research****, is part of a comprehensive treatment or safety plan that meets the standards of informed consent by the individual served or his or her legal guardian, and is* ***evaluated on an ongoing basis via the use of contemporaneously collected objective data****.*p104

Oversights and monitoring restraint or seclusion (not including brief time-out) for both treatment and emergency situations should be made available for ***professional review consistent with prevailing practices****. The* ***behavior analyst*** *is responsible for ensuring that any plan involving restraint or seclusion conforms to the* ***highest standards of effective and humane treatment****, and the* ***behaviour analyst is responsible for continued oversight and quality assurance****. These procedures should be implemented only by* ***staff who are fully trained*** *in their use, receive regular in service training, demonstrate competency using objective measures of performance, and are closely* ***supervised by a Board Certified Behavior Analyst or a similarly trained professional****.*

The use of restraint or seclusion should be monitored on a continuous basis using ***reliable and valid data collection that permits objective evaluation*** *of its effects.*p106

[15] Since 1974, the Association for Behaviour Analysis International has been the primary membership application organisation for those interested in philosophy, science, application and teaching of behaviour analysis.

82. From the Association of Professional Behaviour Analysts, "*Position Statement on the Use of Restraint and Seclusion As Interventions for Dangerous and Destructive Behaviours: Supporting Research and Practice Guidelines"* **(Attachment J)***:*

*Many investigations of the inappropriate use of restraint and seclusion have revealed that i**ndividuals implementing such procedures were inadequately or inappropriately trained, and that their use of those procedures was not consistent with research and ethical guidelines** on the safe and effective use of restraint and seclusion. Additionally, the procedures were not part of an intervention plan that was based on a functional assessment of the dangerous behaviors **conducted by a qualified behavior analyst**.p4*

*It is APBA's position that restraint and seclusion procedures should never be implemented in isolation, but should only be used as components of properly designed and approved behavior intervention plans that emphasize **state-of-the-art strategies** for reinforcing adaptive skills and preventing problem behavior. They should **only be implemented by individuals who are trained in behavioral intervention and in the use of the specific restraint or seclusion procedures** included in the plan, and who are **supervised by a behavior analyst with experience in treating dangerous behaviors***.p4

*The National Institutes of Health Consensus Conference on Destructive Behavior (NIH, 1989) concluded that "Behavior reduction procedures should be selected for their rapid effectiveness only if the exigencies of the clinical situation require such restrictive interventions and only after appropriate review. These interventions **should only be used in the context of a comprehensive and individualized behavior enhancement treatment package**."*p14

*Technical Assistance Center on Positive Behavioral Interventions and Support (PBIS), U.S. Department of Education, Office of Special Education Programs April 2009 statement on "Seclusion and Restraint Use in School-wide Positive Behavior Supports" noted that "Seclusion and restraint should only be implemented (a) as safety measures (b) within a **comprehensive behavior support plan**, (c) by **highly trained personnel,** and (d) with **public, accurate, and continuous data** related to (1) fidelity of implementation and (2) impact on behavioral outcomes (both increasing desired and decreasing problem behaviors).*"p15

83. "*Evidence-based Guidelines To Reduce the Need for Restrictive Practices in the Disability Sector*" Australian Psychological Society(Attachment C).

*The **overuse of ineffective seclusion or restraint strategies** with children and adolescents is common even with those who do not respond to these methods and the challenging behaviour perpetuates (Samuels, 2009). P27*

*From a behavioural perspective, restraint and seclusion is used as a behaviour reduction method or punishment. However, in practice, teachers and support workers may use such methods for other purposes such as calming young people, removing them from a setting, or providing them with time to self-reflect or problem solve. There is, however, **little evidence to support the effectiveness of these practices** for those purposes P27*

*Behaviours of concern are often complex. Interdisciplinary collaboration can provide a richer understanding of the unmet needs that underlie these behaviours. Consequently, **an interdisciplinary team consisting of a psychologist and one or more professionals from speech pathology, occupational therapy, physiotherapy, psychiatry or general practice can lead to a more effective approach in developing appropriate** interventions. Each of these professionals brings specific expertise to the task of supporting a person who has complex needs.P17*

***Research evidence indicates that psychological interventions can be used to effectively reduce** the frequency and intensity of challenging behaviours when those interventions are individualised and carers know how to implement them. Recent meta-analyses have demonstrated that behavioural interventions are effective in reducing challenging behaviours exhibited by children and adolescents (Harvey, Boer, Meyer, & Evans, 2009), individuals diagnosed with mild mental retardation (Didden, Korzilius, van Oorsouw, & Sturmey, 2006), and individuals diagnosed with autism (Campbell, 2003).p19*

84. It is clear from the language used above that the context of addressing challenging behaviours in schools in Victoria is one that reflects a lack of leadership, scientific rigour and high-level practice.

85. It should be noted from the DET Prevention and Early Intervention document discussed above, that Behaviour Support Plans are also mentioned. The writer refers to her substantive submission at paragraphs 96 – 104 which submits evidence that DET endorse behaviour plans that are unable to be actually seen because they are "unwritten". This practice continues to be endorsed by DET on receipt of parent complaint.

The terms "violent", "aggressive" and "dangerous" are prolifically used throughout the guidelines as supposed to "challenging" behaviours.

86. Language is everything. The writer submits that the reason restrictive practices and violence are used so prolifically in Victorian schools against students with disabilities is that those with challenging behaviours/behaviours

of concern are viewed as being able to control their behaviours, and of being deliberately violent.

87. The writer refers to her substantive submission at paragraph 39 quoting the Marnebek School Code of Conduct which lists restraint and seclusion as "consequences" for inappropriate behaviour. This reflects a punishment-consequence model which not only has no evidence-base behind it, but is known to increase challenging behaviours.

88. Until the culture at DET changes and children with complex behaviours are viewed less as the problem and more as victims of their environment, lack of services and ignorant treatment by others, it is unlikely that their situation will improve.

Other

Funding to support the new policies

89. To the writer's knowledge, there has been no funding earmarked to support teachers who may (or may not) decide to follow some of these policies. Given the content of the policies, any teacher expected to enact behavioural responses should receive compulsory training/information on the following:

- how to collect data on behaviours in order that if required, a trained person can obtain useful information from that data;
- the risks of death and injury when locking children in non-purpose built seclusion rooms;
- positive behaviour support/behaviour analysis - the evidence supporting mitigation/extinguishment of challenging behaviours;
- how to contact people who are qualified to undertake FBAs;
- the risk of legal action against them if they decide to undertake FBAs of students with severe challenging behaviours;
- undertaking FBAs and the ethics behind doing so when insufficiently trained;
- writing Behaviour Plans.

90. The above is just an example and is a non-exhaustive list.

91. In the writer's view, funding would also be required, as an example, for the following:

- Engagement of a Board Certified Behaviour Analyst to undertake a FBA;
- The results of the FBA may require other expert disciplines to become involved, for example a Speech Pathologist expert in Augmentative and Alternative Medication to undertake a communication assessment and develop, monitor and evaluate a communication plan;

- the staff member monitoring the behaviour plan may need to be supervised for an extensive period until the behaviours are mitigated/extinguished.

92. Unless funds are provided to schools and set aside for the above purposes, schools will continue to be in the predicament where they are stretched for funding and, violence, restraint and seclusion will continue to be the easiest and cheapest options in response to behaviours of concern. Online optional information/training in these areas is inadequate to competently undertake the complex tasks now presented to teachers.

Miscellaneous insufficient information

93. This is a problem throughout the website. SAs an example. Under “Responding to Violent and Dangerous Student Behaviours of Concern" (Attachment D), "Legal Obligations", DET simply list a number of laws but do not give guidance to teachers as to how they can remain within the law in relation to responding to "*violent and dangerous*" behaviours.

94. Under "Disability Discrimination Obligations" DET simply list the three antidiscrimination laws that apply and give three examples of discriminatory conduct that have nothing to do with challenging behaviours. Therefore teachers remain none the wiser as to what adjustments are reasonable to put in place in response to *"violent and dangerous*" behaviours that assist them to remain within the confines of the law.

95. There are certainly other documents of relevance to challenging behaviours that are flawed, for example the Disciplinary Measures section refers to suspension but not to the research around how ineffective it is, however these guidelines are less on point for the Committee, than the guidelines mentioned above.

96. There are numerous references throughout the many documents that constitute the new guidelines to "evidence-based strategies" without an explanation as to what such evidence-based strategies actually are.

97. The writer does not claim to have read all of the numerous pages in the new DET behavioural "suite", but only those that she believes are of most relevance to the Inquiry. However it should be noted again that there is a high correlation between inexpertly addressed challenging behaviours, restrictive practices, and violence, abuse and neglect of people with disabilities. Therefore the practices, policies and procedures of organisations providing educational services to students with disabilities must be taken into consideration when considering this grave issue.

SUMMARY

98. To the extent that the new policies and procedures are compulsory, overall the writer submits there is now a reduction in protections for students with

disabilities in Victorian schools. While a number of dangerous physical restraints are banned, teachers continue to be expected to restrain but are not advised as to how to do so. The introduction of seclusion as being acceptable without mandatory best practice guidelines should be viewed as a threat to the safety of students with disabilities who exhibit challenging behaviours in government schools.

99. As is the case with most DET policy documents, procedures and guidelines, it seems that bar the examples directly above, the rest of the policy/practice documents are either so vague as to be unable to be competently followed, or optional.

100. Teachers are now being encouraged to undertake tasks far beyond their responsibilities and expertise. If they do undertake these tasks, they are professionally and ethically compromised.

101. Both DET staff and students continue to be at risk.

Abbreviations

DEECD	Department of Education and Early Childhood Development
DET	Department of Education and Training (formally Department of Education and Early Childhood Development)
DHHS	Department of Health And Human Services
FBA	Functional Behaviour Assessment
OPP	Office of Professional Practice
PASS	Principals Association of Special Schools
VEOHRC	Victorian Equal Opportunity and Human Rights Commission

Attachments

Attachment A	DET Restraint Policy October 2015
Attachment B	DET Restraint Policy 2012-September 2015
Attachment C	*Evidence-based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector* Australian Psychological Society 2011
Attachment D	DET Responding to Violent and Dangerous Behaviours of Concern
Attachment E	*Restraint, Seclusion of Students Attracting New Scrutiny* 2009, Cristina Samuels
Attachment F	Restrictive Practices for General Disability Services
Attachment G	DET Prevention and Early Intervention
Attachment H	" Positive Solutions in Practice: Getting It Right from the Start: the Value of Good Assessment"
Attachment I	Association for Behaviour Analysis International, Position Statement on Restraint and Seclusion
Attachment J	Association of Professional Behaviour Analysts, "*Position Statement on the Use of Restraint and Seclusion As Interventions for Dangerous and Destructive Behaviours: Supporting Research and Practice Guidelines*