**Investigation into Bendigo Special Developmental school**

**Reluctance of Minister Merlino to conduct an investigation**

On 24 May 2015, Disability Advocate Julie Phillips wrote to Minister Merlino requesting an urgent investigation into Bendigo SDS. Numerous attachments and evidence of long-standing reports of caging children, restraint and seclusion were attached (20 attachments).

On 5 June 2015 Ms Phillips again emailed Minister Merlino advising him of a deterioration in treatment of children and families at the school, and requested a response to the original letter. Minister Merlino claimed not to have received the covering letter - only the attachments. Despite receiving the attachments, his office had not contacted Ms Phillips to enquire as to why they were being sent.

On 2 July 2015, Ms Phillips again emailed Minister Merlino referring to her letters dated 24 May 2015 and 5 June 2015 expressed concern that there had been no response.

On 6 July 2015, Minister Merlino responded to Ms Phillips and advised he was making enquiries.

Only 16 July 2015 Ms Phillips contacted Minister Merlino questioning why no action had occurred and stated the importance of the situation.

On 18 August 2015, Ms Phillips contacted Minister Merlino and advised that there had been no contact. She advised Minister Merlino that she had attempted over a number of months to engage constructively with him, and if he did not act she would be publicly releasing numerous documents in relation to Bendigo SDS and DET.

On 5 September 2015, Ms Phillips contacted Acting Deputy Secretary Bruce Armstrong stating that two months previous, Minister Merlino had advised that Mr Armstrong would contact her and she had heard nothing. Ms Phillips suggested a lawyer and ex Human Rights Commissioner to undertake the investigation into Bendigo SDS.

On 9 September 2015, Acting Deputy Secretary Bruce Armstrong, presumably under instruction from Minister Merlino, after three months of sustained pressure, agrees that there will be an investigation.

**How DET ensured that the least amount of people possible would contribute to the inquiry**

In her letter to Minister Merlino dated 24 May 2015, Ms Phillips requested that any investigation reported directly to the Ministry and not DET. The reasons given were:

* DET had been advised in writing since the end of 2010 that cages were being used at Bendigo SDS and had not even responded to the informant
* DET had been advised in writing since the end of 2010 that inhumane and degrading practices were in place at Bendigo SDS and had not even responded to the informant
* The current Regional Director had lost confidence amongst many parents in the region and had endorsed the use of any restrictive practices reported to her in the last few years.
* Former Deputy Secretary Nicholas Pole had been advised of numerous criminal acts and restraint and seclusion at Marnebek School and had refused an independent inquiry.
* Deputy Secretaries Nicholas Pole and Monique Dawson had been advised of restraint and seclusion in Ballarat schools and had failed to respond.
* Current senior staff at DET had failed to prohibit seclusion despite the Victorian Equal Opportunity and Human Rights Commission and the Office of the Public Advocate recommending it do so.
* Former Deputy Secretary Monique Dawson had engaged in victimisation of Ms Phillips.
* The DET Legal Department had been involved in covering up inhumane and degrading treatment of students with disabilities in Victorian schools for years.

**Request refused** - investigation allocated to DET itself. Not only is it allocated to DET, but it is allocated to the actual Region which had previously ignored the allegations of abuse – North West Region.

On 6 September 2015, Ms Phillips contacted Minister Merlino and asked him what protections he would give those contributing to the inquiry. Specifically:

* How he would protect parents and their children from further victimisation.
* How he would protect present and past Bendigo SDS teachers who decided they wished to be included in the inquiry

 On 24 September 2015, Ms Phillips wrote to the chosen investigators and asked:

* If current staff were going to be able to provide information confidentially, as unless they knew that this was the case, they would not contribute to the inquiry.
* If parents of current students were going to be able to provide information confidentially.
* If others who wish to contribute to the inquiry could have their names withheld from DET staff due to current personal attacks by supporters of Bendigo SDS through social media.

On 29 September 2015, the investigator wrote confirming that all witnesses would be given the option to put their name to their statement and remain anonymous. They confirmed that even anonymous witnesses could make allegations that would be put to an individual for a response.

On 29 October 2015, the Acting Deputy Regional Director emailed staff to invite them to participate in the investigation. In his email he does not offer confidentiality.

October 2015 – DET changes investigators.

 The former investigators already have an initial list of the people who wish to give evidence to the investigation. Rather than direct the former investigators to pass the list on directly to the new investigators, DET at the regional level collect the list of names in **direct breach of the confidentiality and anonymity they had promised individuals**. Mr Chris Thompson individually contacted each contributor which included current DET employees and parents. Contributors are shocked at the breach and discussions in the community ensue about the fact that there is no confidentiality and anonymity in the investigation.

Ms Phillips on 15 November 2015, emailed Deputy Secretary Bruce Armstrong and Justitia Lawyers to advise that all names of those contributing to the investigation to date have been given to the very region that has known about allegations of abuse at Bendigo SDS and failed to act. She advised them that the promises made about how the investigation would be conducted confidentiality had been broken, and confidentiality and anonymity has been breached. Ms Phillips requested information as to how those people are going to be protected. The information is never provided.

On 16 November 2015, a member of the public requested that Mr Chris Thompson be removed from any involvement in the investigation. **Request refused.**

On 29 November 2015, Ms Phillips again emailed Deputy Secretary Bruce Armstrong about the breach of confidentiality in leaking of names to DET. She confirms that:

* contributors to the investigation were guaranteed their contributions could be anonymous and confidential
* the fact that the leaking of the names was directly to Region where teachers were directly employed was worse than if their names have been provided without their permission to Head Office
* the former investigators could have contacted each participant and provided their names to the new investigators but they were not directed to do so by DET
* the investigation had now lost credibility and lost numerous possible contributors who now knew that the they would not be protected.

On 6 December 2015, Ms Phillips email Minister Merlino and stated that the investigation was corrupt and those that had volunteered to be involved in the investigation had been shocked and betrayed when they found their names had been given to DET. Ms Phillips confirmed that if contributors had been advised that their names were going to be provided to DET some of them would have withdrawn, but they were not given that option. Ms Phillips advised Minister Merlino that the provision of the names to the same staff member supporting accused Bendigo SDS staff was a measure that in her opinion, was designed to frighten those who had not yet made up their mind about giving evidence. She stated that the only reason people were persevering with the investigation was in order that they could take the conduct of the investigation to the Ombudsman and Independent Broad-Based Anticorruption Commission. Ms Phillips advised Mr Merlino that many contributors already understood that there would be no findings against the Principal or the region.

Towards the end of 2015, the complainants were advised that their allegations would now be put to those they were complaining about and “*that this process would mean that* ***they would be identified*** *to the respondents as the relevant complainant in respect of the allegations*.” (Justitia report dated 18 March 2016 p2 para 8). This was despite the complainants previously being told they could make anonymous and confidential complaints. More complainants withdrew. Current teachers withdrew.

In summary, the conduct of the investigation process was designed to ensure that all contributors knew that their details would be provided to DET and no teachers would be able to contribute without their employer being aware. All promises of confidentiality, a farce.

**How DET restricted the number of allegations that could be investigated.**

Justitia investigated 43 allegations and five lines of enquiry (Justitia Report p 3 para 12).

DET restricted the number of allegations made by ensuring that the minimum amount of people possible would contribute to the inquiry (see directly above).

DET restricted the number of allegations made by tailoring the terms of reference to be so narrow as to cut out individual complaints of abuse. The Terms of Reference were as follows:

* to determine whether there is some risk of danger to students attending the school; and
* to identify whether the school’s operations and organisational culture creates a risk of inappropriate treatment of students attending Bendigo Special Developmental School.

Despite confirming that past abuses would be looked at, many of them were not. On 18 December 2015, Deputy Secretary Bruce Armstrong confirmed in writing that the investigation would necessarily involve investigations of past practices at the school. At least three people out of the few who were left, made formal complaints of cages being in classrooms for many years and evidence was provided that they were used for behaviour management. Evidence provided included meeting minutes, reports to region and eyewitness reports. At least four people out of the few who were left made complaints that external lockable pens were used to lock students in for the purposes of behaviour management. Justitia chose not to investigate.

Despite eyewitness accounts of abusive practices, many of them were not investigated, despite being reported to Justitia. There was no explanation as to why.

Numerous allegations against Bendigo SDS provided to Minister Merlino and Justitia Lawyers that were not investigated. Minister Merlino holds a number of documents substantiating some of these allegations.

1. Some students were consistently subjected to restraint including prone restraint.
2. Multiple students were locked up for significant periods of time from 2007 onwards.
3. There were numerous cages in classrooms, made out of pool fence and fitted with locks.
4. Some children spent 50% of their time in a cage in the classroom.
5. External pens were locked.
6. A student teacher made a complaint to the Department of Education in relation to the locking up of children in inhumane structures at Bendigo SDS.
7. At least two students were tied to chairs.
8. One child was restrained in a pusher and was strapped when travelling into a vehicle in something akin to a straitjacket.
9. Students would be “dropped” to the ground by teaching staff kneeing them in the back of the leg.

The allegations above only constitute part of one person’s allegations. Multiple other allegations placed by persons who withdrew from the investigation once they knew their name would be given to the DET included:

1. The multiple use of pressure points against students by staff after staff being trained in pressure points.
2. Staff member grabbing a student around the throat and throwing him out of the building, observed by the Principal.
3. Staff member throwing a shoe at a student.
4. Staff members sitting on children pulling their arms behind their backs.
5. Staff member bragging how easily she can “drop” students.
6. Staff members “marching” students so their feet barely touched the ground.
7. Multiple seclusion of children in locked areas.
8. Staff member slapping a child around the head.
9. Victimisation of staff who complain.
10. Fraud.
11. Bruising on children.

Allegations from others who continued with the investigation but do not have their allegations investigated included:

1. repeated locking in pens of students in response to behaviours of concern; and
2. aversive practices.

Minister Merlino has failed to respond to allegations from Ms Phillips of:

* Victimisation by senior personnel at DET
* Covering up of abuse by senior personnel at DET
* Some of the practices above.

**Results of investigation**

From the limited number of allegations that made it through to the investigation, allegations of cages and seclusion rooms were found to be substantiated. Allegations that were found to be unsubstantiated were those that evidence did not support, or there was insufficient evidence to support. Therefore, many unsubstantiated allegations simply relied on one person’s word against another person therefore it was impossible to find either way. “*Eleven of the 20 allegations against Ms Hommelhoff were not substantiated*.” Justitia Report p6 para 19 b. Other allegations were substantiated or partially substantiated.

**Bendigo SDS, Minister Merlino, Secretary Gill Callister and the Deputy Secretary Bruce Armstrong endorsement of violence and restrictive practices against children with disabilities**

We can only assume that the use of cages in classrooms and locked seclusion areas, no matter how barbaric, have all been endorsed by the above personnel given that public statements on the matter. DET staff have convinced Justitia that such practices are completely appropriate and reasonable. Despite the Federal Senate Community Affairs Reference Committee labelling such restrictive practices, including seclusion of distressed students with disabilities a “national shame” 4.141 p115 in their 2015 report on the abuse of people with disabilities[[1]](#footnote-1), Victorian DET staff up to and including the Minister indicate their belief that that such practices are completely appropriate.

The “Safe Room” at Bendigo SDS was found so horrific by the Senate Committee that they included its photograph in their 2015 report (p 104). DET are completely comfortable with its use as their glowing testimonies to Bendigo SDS reveal.

Bendigo SDS justifies that current cages in classrooms are to put children who have seizures in, so visually impaired students do not trip over them. There is no therapeutic evidence that suggests this is acceptable in any manner, and in fact the evidence is that restraint and seclusion can cause injury and death. Given DET endorsement of the position, parents and advocates can only assume that every special school and special developmental school with children who have epilepsy may be using this technique and have cages in their classrooms.

Coincidentally, after human rights organisations made formal recommendations to prohibit seclusion, Minister Merlino has authorised the opposite. In October 2015, DET endorsed seclusion as a behaviour management tool. Just in time for the findings of the investigation.

Ms Phillips advised DET that if it didn’t deal with these allegations in an honest, and transparent manner, she would. The documents that indicate violence, abuse, neglect and exploitation will be released to the public.

1. "Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability" November 2015 [↑](#footnote-ref-1)