

Submission to the Senate Community Affairs Committee

**Senate Inquiry into the Abuse of People
with Disabilities
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**Contact:
Julie Phillips
Disability Advocate
PO Box 412, Fairfield VIC 3078
Ph/Fax: 9481-0999
Email: email2jphillips@yahoo.com.au
Mobile: 0417 570 197**

Introduction.....	4
A. ABUSE OF CHILDREN WITH DISABILITIES IN VICTORIAN SCHOOLS ...	6
<u>Can the use of restrictive practices constitute abuse?</u>	6
<u>In which circumstances would restrictive practices be considered abuse?</u>	7
<u>Seclusion</u>	9
Examples of Seclusion used by DET.....	11
<u>Restraint</u>	13
Examples of restraint used by DET.....	17
History of restraint used by DET.....	19
<u>The link between the refusal by DET to use evidence-based psychological behaviour interventions to respond to challenging behaviours, and the abuse of students with disabilities</u>	20
Injury and death as a result of restraint and seclusion	20
Positive Behaviour Support.....	21
Examples of behaviour plans.....	25
Functional Behaviour Assessment.....	28
Rejection by DET of evidence-based practice.....	30
<u>The link between the refusal by DET to use professional practice prevent challenging behaviours</u>	33
Language/Communication	33
<u>A “Last Resort”</u>	36
<u>Victimisation of Those Making Complaints</u>	36
Advocates.....	36
Parents.....	38
Teachers/Aides.....	39
<u>Covering up of inhumane and degrading treatment/illegal treatment of children with disabilities</u>	39
DET FOI Department.....	39
Conduct and Ethics Department.....	41
<u>Bullying</u>	47
<u>School Buses</u>	49
<u>Complaints Process</u>	50
<u>Policies and Procedures</u>	54
B. DHHS.....	55
C. DISABILITY SERVICES COMMISSION.....	57
D. OFFICE OF THE PUBLIC ADVOCATE.....	58
E. VICTORIA POLICE.....	59
F. OMBUDSMAN.....	61

G. CHILD PROTECTION.....	62
H. THE IMPACT OF VIOLENCE, ABUSE AND NEGLECT ON PEOPLE WITH DISABILITY, THEIR FAMILIES, ADVOCATES, SUPPORT PERSONS, CURRENT AND FORMER STAFF AND AUSTRALIAN SOCIETY AS A WHOLE.....	63
RECOMMENDATIONS.....	65
ATTACHMENTS.....	68
ABBREVIATIONS.....	69

Introduction/Summary

I write as a Disability Advocate who has been working in the disability sector since 1990. Since 2000 I have been assisting people with disabilities through general advocacy, by assisting them to make complaints of discrimination, and supporting law firms who require assistance to work effectively in this area.

I have assisted parents in the making of approximately 40 complaints of disability discrimination against the Victorian Department of Education and Training. Most of these have settled.

My history includes working for disability service providers at a grassroots and senior management level, and involvement on numerous Boards in the disability sector, current today. The majority of my work is voluntary.

In the last 10 years, 80% of the clients who approach me for assistance, do so with concerns about the treatment of children and young people with disabilities in schools.

I would estimate that since 2006 I have been approached by several hundred parents and been provided with thousands of documents relating to their family members and their school experiences. Therefore the majority of this submission deals with abuse in Victorian schools. The second reason I concentrate on this area, is that it seems to be an area which to date is "untouchable". No regulator has been given powers to oversee it. No law has been created or altered to cover it. It is hard to understand why, but the abuse of children with disabilities in schools seems to be an area that government and other statutory authorities do not wish to tackle. I commend the Senate for doing so.

In the event that the Department of Education and Training ("DET"), formerly the Department of Education and Early Childhood Development ("DEECD") contact the Senate Committee on Community Affairs ("the Committee") and negate any of the information in this submission, I am able to provide evidence through documentation of everything claimed or quoted. It is impossible and unwieldy to attach every document that is relevant to this submission, although it is possible. However I strongly urge the Committee to contact me in the face of any denial through DET that the information herein is incorrect.

In my submission, DET is likely to provide misleading information to the Committee, as it has to other statutory authorities. Therefore all information received from DET should be checked with the informant, whether it is I or any other person providing information on DET to the Committee.

It was only last week that newly appointed Secretary of DET, Ms Gill Callister made a commitment to appoint an "independent expert" to lead a wide ranging review into DET in the wake of ongoing corruption enquiries. It should be recognised that this will take a significant length of time, and in the meantime many of the same senior personnel remain.

It is important to note that I provide the personal information below either as a result of it being public information, in hearings and/or permission of the families involved.

It is recognised that some of the more sophisticated concepts regarding evidence-based psychological interventions and behaviour analysis included in this submission will most readily be understood by those qualified in this area and working in the field.

What is the extent of the abuse of students with disabilities in Australian schools? Attached is an Excel sheet¹ with some of the comments that a change.org petition recently attracted. The original comments, which have been expanded upon, can be viewed at:

<http://www.change.org/en-AU/petitions/mr-denis-naphine-premier-of-victoria-mr-daniel-andrews-leader-of-the-opposition-hold-a-royal-commission-in-to-the-abuse-of-children-with-disabilities-in-victorian-schools>

The Senate can rightly conclude that the abuse of children with disabilities in schools is a significant issue throughout Australia and many people (over 12,000) believe that a Royal Commission into the subject is necessary.

Violence, abuse and neglect against and of children with disabilities represent the most significant betrayal of trust that we can imagine. There is no one more vulnerable than a child with a disability, particularly when due to that disability, they are non-verbal and cannot communicate what is happening in their lives.

The fact that most abuse against children with disabilities in schools is directly from teaching staff and sanctioned by government employees makes such abuse even more shocking and inexplicable.

Like any other type of neglect or violence, against any child, violence and abuse against children with disabilities shapes that child, and the trauma can affect them for the rest of their lives. The trauma is not limited to the children themselves, but also to their families, who are often helpless to stop such abuse.

The acceptance or ignoring of the abuse of people with disabilities demeans us all. The regulators and statutory authorities, who form part of the problem, set an example for the Australian community. Each time an individual or organisation looks the other way when a person with a disability, their family, advocate or friend attempts to report abuse, the safety net for people with disabilities weakens.

There is little consequence for violence, abuse and neglect against people with disabilities, particularly non-sexual violence, and particularly violence against children in schools.

My submission is that this must change. Consequences must flow from refusals to protect this segment of the Australian community. Senior bureaucrats who look the other way, or directly endorse these practices must be held accountable.

¹ See Attachment 1

Until Australian society, led by government, makes it clear that this abuse will not be tolerated, we will simply have report after report, a peak in interest after the latest television documentary, and then the status quo will slip back into place.

The challenge in this area is that government itself is the main abuser - either directly through its service provision, or through the contractors it hires to provide services. Once substantial organisations such as Yooralla obtain a significant hold on disability services and government funding, the impetus by government to address shortcomings in a direct and decisive manner, fades. One can see government bureaucrats pondering the consequence of an organisation such as Yooralla losing its funding and wondering how it will be replaced.

In my submission, these considerations are placed more highly than considerations for the health and safety of people with disabilities.

If we accept that government is disinterested in regulating itself, then one of the most important focuses from this Inquiry must be independent regulation. Until we have strong, independent and powerful regulation, people with disabilities are not safe.

A. ABUSE OF CHILDREN WITH DISABILITIES IN VICTORIAN SCHOOLS

Can the use of restrictive practices constitute abuse?

1. In its 2012 report "*Held Back - The Experiences of Students with Disabilities in Victorian Schools*" ("the Held Back Report"), the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC") considered reports made to it from students, parents and teachers on the use of restrictive practices (restraint and seclusion) against students with disabilities.
2. VEOHRC argues that the use of restrictive interventions in government schools engages, and arguably limits, the following human rights under the Charter of *Human Rights and Responsibilities Act 2006*²:
 - a. Equality before the law
 - b. Protection from torture and cruel, inhuman or degrading treatment
 - c. Freedom of movement
 - d. Protection of families and children
 - e. Right to liberty and security of person
3. VEOHRC also raises the following treaties under which Australia has obligations that relate to the use of restraint and seclusion of children³:
 - a. International Covenant on Civil and Political Rights
 - b. International Covenant on Economic, Social and Cultural Rights
 - c. Convention on the Rights of Persons with Disabilities
 - d. Convention on the Rights of the Child
 - e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
4. It is clear that restrictive practices are arguably violations of a child's human rights, and dependent on the circumstances, can constitute abuse.

In which circumstances would restrictive practices be considered abuse?

5. When there are alternatives to restrictive practices which are nonphysical, non-violent, and non-punitive, and those alternatives are withheld in preference to using restraint and seclusion, it is submitted that restraint and seclusion should be viewed as constituting abuse.
6. Such alternatives include evidence based psychological interventions. Unfortunately, while terms such as "evidence-based" are used prolifically in DET publications⁴, when attempting to negotiate positive behaviour support for students with disabilities there are numerous barriers which ensure that

² "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 107

³ "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 109

⁴ "Effective Schools Are Engaging Schools" 2009 DET; *Blueprint for Education and Early Childhood Development* DET 2008

they do not actually receive "evidence-based" supports. These include the fact that:

- a. There is no explanation in DET publications as to what terms such as "evidence-based" actually mean;
 - b. Teachers must access (or should access) psychologists whose area of expertise is behaviour analysis in order to decide upon and implement evidence based psychological interventions and they do not have the resources to do so;
 - c. DET psychologists are in the main insufficiently trained in positive behaviour support themselves, and have been known to actually endorse and train staff in restraint and seclusion in preference to professional behaviour assessment and planning⁵.
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.⁶ As a result, adults who have not even mastered the skills to teach basic subjects like English⁷, and who are required to have some of the lowest ATAR scores to enter university⁸ are responsible for, and claiming to be experts in, children with complex disabilities and managing challenging behaviours.
8. These are the ingredients for an environment conducive to the mistreatment of students with disabilities.

Seclusion

9. **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.

⁵ DET Psychologist Maple Street Primary School, DET Psychologists at Special Schools who routinely use restraint and seclusion as behaviour "consequences" such as Marnebek School (refer Code of Conduct).

⁶ Marnebek School, Cranbourne, Victoria evidence given at VCAT 2012 HL v State of Victoria & Karen Dauncey A64/2013

⁷ *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).

⁸ "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>

Seclusion includes situations in which people believe they cannot or should not leave an area without permission⁹.

10. This definition is quite inconvenient to DET, who often use spaces that could be viewed benignly in and of themselves, were it not for the fact that children are being locked in such spaces, unable to leave, in response to challenging behaviours.
11. In addition to rooms whose sole purpose is to provide a space where teachers can lock children up, schools use and have used the following spaces to seclude children with disabilities:
 - a. courtyards¹⁰;
 - b. outdoor pens; ¹¹
 - c. sensory gardens;¹²
12. Seclusion areas also reported by parents include first aid rooms and store rooms¹³. These rooms have been used in mainstream schools where purpose-built seclusion rooms do not exist.
13. Seclusion performs the function of being a cheap alternative to putting in place intensive psychological interventions for students with disabilities who demonstrate challenging behaviours.
14. DET have refused calls to prohibit seclusion in government schools since 2012. In 2012, VEOHRC called for seclusion in schools to be prohibited in the context of their use involving children with disabilities.¹⁴ In early 2013, the Office of the Public Advocate called for seclusion in schools to be prohibited.¹⁵
15. The Victorian Auditor General's Office ("VAGO") in 2012 found that DET *"policy and guidance documents assist schools to support students with special learning needs, however, gaps remain in critical areas such as **restraint, seclusion** and parents paying for additional support for their child."*¹⁶ [emphasis added]
16. There is no plausible reason why DET refuse recommendations from these respected statutory authorities. In the absence of any rational explanation, the following inferences may be drawn:

⁹ 'Evidence-based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector' 2011 Australian Psychological Society p 11

¹⁰ See Attachments 2A & 2B Marnebek School, Bulleen Heights School

¹¹ See Attachments 3A & 3B Southern Autistic School, Bendigo Special Developmental School

¹² Marnebek School

¹³ Alfredton Primary School, Wendouree Primary School

¹⁴ "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 14

¹⁵ Position Statement "*Restrictive Interventions in Educational Settings*" Office of the Public Advocate March 2013

¹⁶ "*Programs for Students with Special Learning Needs*" VAGO 2012 p21

- a. DET believe that seclusion is appropriate in the "behaviour management" of children with disabilities; and/or
 - b. DET have bowed to pressure from the Principals Association of Special Schools ("PASS") to allow them to deal with students with disabilities in any manner they see fit.
17. 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.*"¹⁷
18. 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.*"¹⁸
19. This is extremely concerning, as PASS is not expressing concern that seclusion is ineffective, barbaric, and has contributed to the injury and deaths of people with disabilities. Rather it is concerned that there may be a negative consequence for their staff actions (locking children up), and they may not be able to continue to use seclusion as they have in the past.
20. What is also concerning is that the DET Legal Department had a view that DET employees had been acting illegally, and might continue to act illegally, but did not and have not taken any steps to prohibit such actions. In fact the DET Legal Department are often involved in vigourously and aggressively defending and justifying complaints of illegal imprisonment.
21. The recommendations in the Position Paper include the following:
- a. *that the DEECD implements procedures to endorse individual school policies re restraint of students so that teachers and other staff in specialist schools can work **with confidence*** [emphasis added]
 - b. *that the DEECD implements procedures to endorse individual school policies re the use of time away so that teachers and other staff in specialist schools can work **with confidence*** [emphasis added]
22. In other words, PASS wish for each school to be able to develop and use its own policies, regardless of best practice, lack of consistency, dangers of injury and death, and lack of expert input.
23. PASS has received its wish, as seclusion continues to be used and approved, and restraint policies are so vague and broad that they allow almost any action by a staff member against children with a disability.

¹⁷ See Attachment 4. PASS Position Paper on Positive Management Strategies June 2011 p4

¹⁸ PASS Position Paper on Positive Management Strategies June 2011 p3

Examples of Seclusion used by DET

24. The "Held Back Report" contains reports that schools use a variety of spaces to seclude children with disabilities, including a locked cupboard, a disused school room used for junk, outdoor 'pens', and designated 'seclusion rooms'.¹⁹
25. Outdoor pens, similar to those used to keep cattle or sheep in a small area are employed, ostensibly, to keep children with disabilities "safe" in outside areas. Such structures are cheaper than ensuring a secure perimeter fence for the school, putting in place formal walking programs, or obtaining the services of a qualified Behaviour Analyst in order to determine why a student may be trying to leave the school grounds.
26. However in reality, these areas are often used as a consequence for a student with challenging behaviours as children are observed to be locked in these areas on their own without contact with others or equipment.
27. As mentioned above, such pens have been photographed at Bulleen Special School, Southern Autistic School and Bendigo Special Developmental School. However it is likely that many special schools/special developmental schools have these areas, as they are clearly viewed as acceptable practice by DET. These areas can be used to place children with challenging behaviours in for hours at a time.
28. One of the worst external seclusion areas that has been brought to the writer's attention is the "Safe Room" at Bendigo Special Developmental School which is approximately the size of a disabled toilet, has wooden walls which cannot be seen through, and two bolts on the outside²⁰.
29. This room is included in the "behaviour management plans" of students - plans which despite endorsing extreme strategies, are not based on a Functional Behaviour Assessment and are not drawn up by a qualified Behaviour Analyst, or even a psychologist. An example contains such unsophisticated "strategies" such as *"If all else fails, give a choice between doing X or going to the 'safe room'."* *"If xxxx's behaviour deteriorates and he doesn't respond, there is no point talking, just get him to the 'safe room' for time out. 2 able staff are required to escort him to the 'safe room'".*²¹
30. As there are absolutely no regulations or guidelines on seclusion provided to school staff from DET, it is clear that staff drawing up such behaviour plans and forcing children into structures like the "safe room" have not the slightest understanding of what is required to ensure that children are safe in such an environment. Putting aside the fact that seclusion should only be used in extreme circumstances, and after more sophisticated evidence-based psychological interventions have been tried and have failed, it is clear that

¹⁹ "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p112,113

²⁰ See Attachment 5 "Safe Room" Bendigo Special Developmental School

²¹ See Attachment 6 Behaviour Management Plan Bendigo Special Developmental School

teachers have not been provided with regulations by any individual or organisation to ensure that seclusion is not misused - if one accepts that it should ever be used.

31. As can be seen in the plan:

- a. There is no direction as to the maximum length of any period in seclusion;
- b. There is no direction as to the number of times during a single day that a child should spend in the seclusion room.
- c. There is no requirement for the student to be observed at all times (impossible in this particular seclusion area).
- d. There are no directions or guidelines on restraint (clearly being used when the student is being "escorted" into the room).
- e. There is no requirement for any psychological intervention at any stage in the behaviour "model".
- f. There is mention on page 3 of having "*male staff on standby*" making it clear that the child is being physically forced into this room. Coupled with the fact that there are no guidelines or regulations on the types of physical force that can be used against students with disabilities, the example just provided is one fraught with danger and risk for both staff and students.

32. While this "structure" has allegedly been dismantled, it is clear it was certainly in use in 2010, and the same Principal that believed such mistreatment of students with disabilities was appropriate, remains in place.

33. In addition, a number of staff have confirmed that in 2010 there were also **cages inside classrooms**, which children were locked inside. Currently, outdoor pens with locks remain on the grounds.

34. Western Autistic School are reported to use seclusion rooms as a matter of course, without incident reporting or documentation.²²

35. A photograph of the timeout room at Wantirna Heights Special School (now Eastern Ranges Special School) is attached.²³

36. There are no guidelines from DET about seclusion rooms, including:

- a. if they are permitted at all;
- b. minimum size;
- c. what they may be built from;
- d. if they require observation windows/video cameras to enable observation;
- e. maximum amount of time to be spent in seclusion;
- f. what records of the seclusion must be kept;
- g. what psychological interventions must be put in place before seclusion is used.

²² See Case Study 1

²³ See Attachment 7

37. Marnebek School had a seclusion room which was clearly marked on a school map as a "Timeout Room"²⁴(TR). Numerous parents describe the room as having a window which was painted over, being empty, no bigger than a disabled toilet, and having bolts on the outside of the room. After a parent complaint and anticipating legal action, Marnebek quickly "renovated" the room leaving no evidence to allow its investigation as a seclusion room.
38. Similarly, Hume Valley Special School, upon receipt of a complaint from an older student of being locked in the dark in a room called the "Blue Room" in 2012, also quickly "renovated" the room, going so far as to even replace the door. It then denied the seclusion took place, and denied the structural make-up of the room, while having destroyed the evidence that upheld the student's complaint.
39. Marnebek documents in its Student Code of Conduct that it will use "time out" as a consequence of inappropriate behaviour²⁵. It should be noted that the Marnebek "Timeout" room was not a sensory room or a "calming" room, but that described above. In fact the oft used euphemistic descriptions of seclusion rooms as "timeout" rooms has the effect that parents are not provided with the information they need about the treatment of children with disabilities.
40. 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 shut²⁶, 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.

Restraint

41. Until mid-2012, the single guidance note for staff subjecting children with disabilities to restraint was Regulation 15 of the *Education and Training Reform Act 2006*. Regulation 15 consists of one sentence only, which is as follows:

"A member of the 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."

42. While the paucity of information in this one sentence speaks for itself, for the sake of completeness the following should be noted.

²⁴ See Attachment 8

²⁵ See Attachment 9 Marnebek School Communication Books "Student Code of Conduct"

²⁶ K v State of Victoria [2013] FCA 1398 and in one

- a. There is no explanation as to what constitutes an action which is "reasonable".
 - b. There is no definition of what constitutes an act or behaviour which is "dangerous".
 - c. The interpretation of this sentence is left to individual staff.
 - d. There is no requirement for any psychological intervention or comprehensive behaviour assessments, regardless of how many times restraint might be used.
43. Despite DET creating a Restraint Policy²⁷ just before the VEOHRC "Held Back Report" was released, Regulation 15 is still the response of choice when DET defends itself and its staff against their use of restrictive practices against children with disabilities²⁸. Indeed the new Secretary Ms Gill Callister has already endorsed Regulation 15.²⁹
44. Attached are minutes entitled Student Support Group Meeting³⁰ where in response to parents maintaining they did not want their child subjected to restraint and seclusion, school staff quote the "DEECD Policy" on the left-hand side of the page. Interestingly, though, the only part of the Policy they quote is Regulation 15, giving themselves permission to do anything they believe is "reasonable". No other part of the policy is quoted.
45. Interestingly, the DET Autism Coach was in attendance at this meeting. It should be noted that DET Autism Coaches are not required to have any actual qualifications in Autism but are held out to be "experts". Despite planning on restraining the file as can be understood by the discussion, no formal behaviour support from a psychologist was provided.
46. The Restraint Policy dated May 2012 and reviewed in March 2014 (and which remains unchanged) is two pages long, and like most other DET policies is labelled a "guide". In other words, staff are not even required to follow the policy. This has been the standard response by DET to other of its documents, making most publications from DET meaningless.
47. The current Restraint Policy is completely inadequate, and given the nature of most of its contents, can be relied upon to give little or no assistance to staff.

²⁷ See Attachment 10

²⁸ Letter to parents 4 April 2014 North-Western Regional Director Jeanette Nagorcka
 Letter to parents 24 June 2014 North-Western Regional Director Jeanette Nagorcka
 Letter to parents 9 March 2012 Acting General Manager, Coordination and Strategy Division,
 Education Partnerships Division, Ms Helen Clarke

²⁹ Letter Gill Callister to Rebecca Kelly 27 March 2015

³⁰ See Attachment 11 SSG Minutes Wendouree Primary School 12 December 2012

48. The Federation of Community Legal Centres' Submission on the Draft *Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector*³¹ made the following points:

"The recent DEECD Restraint Policy dated 2012 can be compared to the Office of the Senior Practitioner May 2011 guidelines on restrictive practices.

The DEECD policy:

Allows restraint to prevent the student from 'inflicting harm' on themselves or others. Such a phrase, not identifying the seriousness of that harm, allows a teacher to restrain in the event of a child simply hitting another child. There is no attempt to define 'harm', and therefore each staff person is able to interpret the phrase individually.

Allows restraint when there is 'no reasonable alternative' that can be taken to avoid the danger. There is no guidance to staff on what 'reasonable alternatives' may be, and there is no definition of 'danger'.

Disallows restraint unless 'alternative measures to avoid the danger have been exhausted'. There is no attempt to give guidance on what may be 'alternative measures'.

Gives no guidance on which restraint holds are acceptable and which are not. There is no warning that restraints have been known to cause death and injury, or which restraints are most likely to do so.

States that it is 'advisable' that staff using restraint should be trained. It gives no guidance on that training, and in fact the DEECD openly admits to using martial arts instructors as trainers.

Asks staff to 'consider' a number of factors such as 'medical conditions' and so on but gives no guidance as to how they should consider such factors, and how those factors will be impacted upon by the use of restraint.

Does not require permission for restraint from any person within or outside the organisation that may have expertise in this area.

There is no mention of Positive Behaviour Support, Functional Behaviour Assessment and Analysis, or the role of psychologists in the mitigation of challenging behaviours."

49. The Restraint Policy solidifies the usual ambiguity that is a hallmark of DET policies, procedures and guidelines in order that even when claiming to follow the Policy there is little danger of many staff actions being found to be in breach.

³¹ 'Submission on the Draft Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector' Federation of Community Legal Centres June 2013 p6

- a. The Policy states, amongst other things, that:
- i. Restraint **should** not be used unless alternative measures to avoid the danger of harm have been exhausted
 - ii. Restraint **should** never be used in the following circumstances:
 - iii. Restraint **should** not be used on a student in any of the following circumstances
 - iv. Restraint **should** not be used unless all of the following conditions are met
 - v. If applying restraint, staff **should** only:
 - vi. Staff **should** talk to the student throughout the incident. Staff **should** make it clear to the student when and why the restraint is to be applied. Staff **should** also calmly explain that the restraint will stop once it is no longer necessary to protect the student and/or others.
 - vii. It is also advisable that **whenever possible**:
 - viii. "Only staff trained in using restraint **should** use restraint on a student."
 - ix. Only staff trained in using restraint **should** use restraint on a student.
 - x. A staff member **should** contact the student's parents and provide them with details of the incident as soon as possible.
 - xi. The incident **may** need to be reported to:
 - xii. A written record of the incident and the restraint used must be made by the principal as soon as practicable. This record **should** detail:
 - xiii. The principal **should** also arrange for all staff who were involved/present at the incident to prepare a statement / record of their involvement or observations of the incident.

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 xxxxxxxx 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."

51. Ms Nagorcka further states, just in case there was an interpretation of the policy that parents should be provided with any formal written notification of such restraint:

"I advise that application to access these records can be made in writing to:

FOI and Privacy"³²

³² Letter to parents Regional Director Jeanette Nagorcka 4 April 2014

The mother did make the application. No documents of the restraint were provided.

52. However it should be noted that despite this young girl with Autism being restrained every morning throughout one period of her school life for **45 minutes³³ every morning**, her parents were not notified either verbally or in writing. If it were not for discovering an e-mail after the student left, at no time would DET staff have informed the child's parents of what they were doing to her. Despite numerous notifications of the restraint to Regional Director Jeanette Nagorcka, Ms Nagorcka has simply decided not to respond to the matter. Needless to say, there has been no concern expressed by any DET staff member at the harm in trauma that would be expected to be caused by such actions.
53. The unprofessionalism, dearth of best practice and general inadequacy of the DET Restraint Policy is no doubt why the Victorian Auditor General's Office recommended that DET review this policy³⁴. DET did so. It remains the same.
54. As an example of restraint guidelines developed for the protection of adults with disabilities by the Victorian Government Office of Professional Practice (previously known as the Office of the Senior Practitioner), the *Physical Restraint Direction Paper*³⁵ is a document of some 20 pages, and is supported by the *Disability Act 2006*.
55. There is no comparison to be made between the two documents, suffice to say that the DET policy provides students with no protection, and staff with no real guidance. What is most disturbing is the obvious comfort DET have with the status quo.

Examples of restraint used by DET

56. The VEOHRC "Held Back Report" includes the following types of restraints reported to them by parents:
- a. students taped to a chair;
 - b. "roped" out of a tree;
 - c. grabbed by the back of the neck and pulled to the ground;
 - d. prone restraint.³⁶
57. Restraints reported directly to the writer include:
- a. aides knocking down children by collapsing the back of their legs, and then restraining them on the ground;
 - b. basket holds;
 - c. "frog marching";
 - d. twisting arms behind backs and then forcing children to the ground;
 - e. head locks;

³³ Documented in E-Mail from Specimen Hill Primary School dated 29 November 2012

³⁴ "Programs for Students with Special Learning Needs" VAGO 2012 Recommendation 4

³⁵ *Senior Practitioner Physical Restraint Direction Paper*, May 2011

³⁶ "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p110,111

- f. strapping children to chairs³⁷.
58. Restraint is documented by Marnebek School to be a consequence of inappropriate behaviour³⁸.
59. Schools that subject students with disabilities to physical restraint in the absence of Functional Behaviour Assessments or the intervention of experts qualified in behaviour analysis have been reported to me as including the following:
- a. Alfredton Primary School (documented)
 - b. Bendigo Special Developmental School (documented)
 - c. Bulleen Heights School (documented by video)
 - d. Manor Lakes College (documented)
 - e. Maple Street Primary School (documented)
 - f. Marnebek School (documented)
 - g. Monash Special Developmental School (documented by the photograph and report)
 - h. Specimen Hill Primary School (documented)
 - i. Wantirna Heights School (now Eastern Ranges) (documented)
 - j. Wendouree Primary School (documented)
 - k. Western Autistic School
60. Given the lack of documentation and transparency around restraint, these schools should be seen as the iceberg.
61. Martial Arts expert, James Sumarac has been used extensively by the DET to "train" staff in restraint. It is important to note that DET could require schools, in preference to hiring martial arts experts to train staff, to engage Board Certified Behaviour Analysts to train staff in evidence-based non-violent responses to challenging behaviours. They have chosen not to do so.
62. Mr Sumarac has trained staff in at least the following schools:
- a. Barina School
 - b. Bendigo Special Developmental School
 - c. Bulleen Heights School
 - d. Dandenong Valley Special School
 - e. Naranga School
 - f. Wantirna Heights School (now Eastern Ranges)
63. The above list of schools only represents those schools that have admitted such training in the course of a complaint, are listed on Mr Sumarac's website as endorsing his training, or from staff training certificates provided to the

³⁷ Photographic evidence Monash Special Developmental School, Observation of Behaviour Consultant (report supplied upon request) "*At its worst guarding can take extreme forms. In the recent past the writer returned at a specialist school in which little autistic children were being strapped into their chairs notionally to stop the running away. However all such mechanical restraint does is increase the child's efforts to escape. It does not address the issue of positive training.*"

³⁸ See Attachment 9. Marnebek School Communication Books "Student Code of Conduct"

writer. It should be assumed that such training has been provided more widely than the list above.

64. Staff at Bendigo Special Developmental School report having received pressure point training from Mr Sumarac and have been observed to use that 'technique' on students with disabilities.
65. Using masking tape around the wrists is documented as a strategy to stop a student removing his clothing³⁹ in a Bendigo SDS behaviour plan. All behaviour strategies included in plans are signed off by the Principal.
66. A parent at Marnebek School observed a child being rolled up in a blanket and dragged down a corridor in response to non-compliance⁴⁰.

The history of restraint used by DET

67. As we live in hope that DET's approach to students with challenging behaviours has been and is being refined over the years (which is frightening when we consider what it may have been like 20 years ago given the current situation), restraint has clearly been used by DET for decades.
68. As DET are not open and transparent about the methods schools use, and often do not document seclusion or restraint in order that there is no evidence when challenged of such practices, it is difficult to track an accurate history of violence, abuse and neglect experienced by students. In terms of recent history, however, we do note the following.
69. Martial Arts Expert James Sumarac has been training staff in special schools at least since about 2000.
70. It difficult to know just how long the Martial Arts 'Therapy' ("MAT") Program has been running using MAT Support Officers ("MSOs") to work with children with moderate to severe challenging behaviours. It is important to understand that this is not describing a program that teaches students martial arts. MSOs are trained in "safe restraint techniques".⁴¹
71. It is not clear whether martial arts experts are training these personnel, but given the name of the program, it is likely. Once again, this is a program being advertised by Eastern Metropolitan Region of DET in place of any formal training occurring in Behaviour Analysis.
72. It was as recently as August 2014 that Anzuk, a recruiting agency, were advertising for the position of Martial Arts Therapy Aides to work "*in a range of special needs and primary schools in Melbourne's eastern suburbs*"⁴². As is

³⁹ Behaviour Management Plan, Bendigo Special Developmental School 1 September 2009

⁴⁰ UK Daily Mail Report 19 May 2014 <http://www.dailymail.co.uk/news/article-2632432/Parents-accuse-Melbourne-special-needs-school-mistreating-children.html#ixzz32D5ozygY>

⁴¹ See Attachment 12. Http : //www. emroptions. vic. edu. aulmat-program/redirection

⁴² See Attachment 13. ANZUK recruitment advertisement 9 August 2014

consistent with the use of euphemisms by DET to distract parents from the real nature of such "supports", DET choose to put the word "therapy" after the words "Martial Arts" in order one assumes, to soften the description. A non-essential component for those who wished to apply, was working previously in a special need setting or school. This, one can infer, is because the focus is on using martial arts rather than having any expertise in educating children with disabilities.

73. DET includes in the key selection criteria for such staff, "*a caring and enthusiastic nature*". Research and evidence seems to have passed DET by in relation to the fact that restraint causes injury, death, and trauma.
74. This advertisement was withdrawn as soon as a story in The Age newspaper appeared discussing the advertisement.
75. Reports continue to be made in relation to restrictive practices used against students with disabilities in schools. Every year that DET refuse to prohibit seclusion, one can only assume that it is being used. Indeed special schools continue to be built with such purpose-built rooms.

The link between the refusals by DET to use evidence based psychological behaviour interventions to respond to challenging behaviours, and the abuse of students with disabilities.

76. It is important that those unfamiliar with the area of challenging behaviours and evidence-based psychological interventions understand that in the vast majority of cases, restraint and seclusion are simply not required to address challenging behaviours, and in fact are ineffective, worsen behaviours and create trauma, injury and death.

Injury and death as a result of restraint and seclusion

77. It has been known for a significant period of time that children with disabilities (and adults with and without disabilities) have been injured or killed through the use of restraint and seclusion. It is inconceivable that a government department that has responsibilities *in loco parentis*, and has a Student Support Services Department employing psychologists, is unaware of such research/reporting.
78. In fact the issue of students suffering these consequences in schools specifically, has been the subject of significant reporting⁴³. Outside of the school environment, much work has been done by another Victorian government department, the Department of Health and Human Services, which has been producing publications through the Office of Professional

⁴³ "School Is Not Supposed to Hurt" 2009 (National Disability Rights Network)

"Unsafe In The Schoolhouse: Abuse Of Children With Disabilities" 2009, The Council of Parent Attorneys and Advocates Inc
"Seclusions and Restraints - Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centres" 2009, United States Government Accountability Office.

Practice, that set out the harm of restraint and seclusion against people with disabilities more generally.⁴⁴

79. The Australian Psychological Society has often worked hand-in-hand with the Office of Professional Practice (formerly Office of the Senior Practitioner) and published numerous documents on the subject of eliminating restraint and seclusion and the harm such practices cause, each document referencing numerous other research information and reports.⁴⁵
80. It is impossible that DET are not aware of the risks of restraint and seclusion - not only for students but for staff, if only for the fact that the writer has advised them in writing of this research on numerous occasions over a number of years. Their failure to prohibit seclusion, or give detailed guidance on restraint, should therefore be viewed as deliberate, reckless and negligent.

Positive Behaviour Support

81. The concept of School Wide Positive Behaviour Support has been claimed by DET as a tenet of its own since 2006.
82. The Royal Children's Hospital Educational Institute ("the Institute") is a funded arm of DET.⁴⁶ DET has members on the Board.
83. The Institute's 2005 Annual Report sets out that the DET funding for that financial year was \$1.2 million. In 2010, the funding was \$2.7 million.
84. The relevance of this information, to this submission, is that in 2006 the Institute produced a resource document entitled "*Students with Disabilities: a Curriculum Toolkit for Schools and Teachers*"⁴⁷ ("the Toolkit"). The Toolkit, as can be seen by the front cover, is intended to be a resource for students with disabilities. DET have been attempting to disown many of its contents (in addition to the contents of its own publications) ever since parents and advocates have been raising the question as to why DET practice does not conform to its contents.
85. Component 5 of the Toolkit is entitled "*Promoting Positive Behaviour Support (PBS) in Schools*"⁴⁸.
86. Parents and advocates have been waiting for Positive Behaviour Support to make an appearance in schools since 2006. DET again refers to "Schoolwide

⁴⁴ "From Seclusion to Solutions" 2007

"Physical Restraint in Disability Services" 2009

"Senior Practitioner Physical Restraint Direction Paper" May 2011

⁴⁵ "Evidence-based Guidelines to Reduce the need for restrictive practices in the disability sector."
Australian psychological Society 2011

⁴⁶ <http://www.rch.org.au/education/#>

⁴⁷ See RCH Educational Institute Annual Report 2005, p14

⁴⁸ *Students with Disabilities: a Curriculum Toolkit for Schools and Teachers* p109

*Positive Behaviour Support*⁴⁹ in their Student Engagement Policy Guideline.⁴⁹ There has been no sign of such positive behaviour support in a practical sense in government schools, and in fact the practical experience of students with disabilities and their families has been completely the opposite.

87. The Toolkit correctly describes the current state of play (at that time, being 2006) in what had historically been referred to as "traditional behaviour management" and Positive Behaviour Support. The description is replicated below from page 110.

Traditional Behaviour Management	Positive Behaviour Support
Views individuals as "the problem"	Few systems, settings, and skill deficiencies as "the problem"
Attempts to "fix" the individual	Attempts to "fix" systems, settings, and skills
Extinguishers behaviour	Creates new contacts, experiences, relationships and skills
Sanctions adverse approaches	Sanctions positive approaches
Takes days or weeks to "fix" a single behaviour	Implemented by a dynamic in collaborative team using person centred planning in typical settings
Often resorted to when systems are flexible	Flourishes when systems are flexible
	Accept the importance of a holistic approach supporting students and their families

88. Since the publication of this document (and prior to), the evidence is that DET continues to deal with students with disabilities pursuant to the "traditional behaviour management" approach.

89. The policies and procedures of both mainstream and special schools include codes of conduct and behaviour policies that reflect a punitive model. However DET attitudes can best be summed up towards students with disabilities by examining the role models from senior management and how they view challenging behaviours. Not only do they rarely look inwards and contemplate how their own staff incompetence and environment may contribute to challenging behaviours (or even be the sole cause of them), but the manner in which they speak about challenging behaviours and the children with disabilities that exhibit them, gives us some insight as to how abuse against those children flourishes in school environments.

90. *"..... it is the expectation that the Department of School take active steps to reduce the need for restraint through the implementation of appropriate*

⁴⁹ *Effective Schools Are Engaging Schools* Department of Education and Early Childhood Development 2009

*programs and support for students **exhibiting violent, dangerous and/or aggressive behaviours.***" [Emphasis added]

91. The above quote is from Regional Director Jeanette Nagorcka⁵⁰ in response to a complaint about the restraint of a primary school aged girl with Autism Spectrum Disorder, who is now so traumatised by her schooling experience that it has been recommended by a psychologist that she not attend school.
92. A word search through a recent Federal Court Case regarding a young boy with moderate-severe Autism Spectrum Disorder will easily find the word "aggressive" in relation to his behaviour numerous times, but not the word "challenging".⁵¹ This is due to the fact that DET portrayed him in this manner during the trial despite his Severe Autism Spectrum Disorder, and despite the fact that he had been subjected to restraint and seclusion most of his school life, thereby, no doubt, contributing to his challenging behaviours.
93. *"I am confident that the resources currently being developed for schools, including training based on schoolwide positive behaviour support, extended guidance and support material around avoiding and managing challenging and **threatening** behaviours, will further strengthen capacitive schools comply with their legal obligations and to provide an inclusive schooling that supports diversity."*
94. This response was from Deputy Secretary Nicholas Pole when asked to appoint an independent investigator to look at the abuse of children with disabilities at Marnebek School.⁵² He declined.
95. An example of DET Behaviour Plans demonstrates the following:
- a. DET do not use Positive Behaviour Support, and rely on punishment and consequence;
 - b. DET staff have no training in writing behaviour plans, hence DET plans have little in common other than their poor quality and lack of any best practice approach.
96. Not able to be provided to the Senate, are the "invisible" DET behaviour plans, which are 'unwritten'. These invisible behaviour plans are used extensively by DET when defending themselves against abusive practices. The benefits of invisible plans of course, are that the DET staff can claim these plans contained all manner of goals, strategies, measurable outcomes and demonstrable expertise.
97. There is no hint of embarrassment by DET when claiming that having these invisible plans is an appropriate mechanism by which to address challenging behaviours.

⁵⁰ Letter to parents dated 24 June 2014

⁵¹ K v State of Victoria [2013] FCA 1398

⁵² Letter to writer from Nicholas Pole dated 9 May 2014.

98. In a Federal Court decision, staff from Bulleen Heights School were not embarrassed to give the following information in relation to their behaviour plans for a child that they viewed appropriate to restrain, with the guidance of a Martial Arts expert, but not appropriate to receive any sort of formality in terms of positive behaviour support.

*James' classroom teacher Ms Glenis Vieux had a behaviour management plan for him (though it was not labelled as such) which was **written on a whiteboard** or placed on the wall. The purpose of the behaviour management plan was to set goals and put strategies in place to achieve those goals. Ms Vieux analysed James' behaviour on a daily basis. [86]⁵³*

99. Needless to say, the "behaviour management plan" and the "analysis" could not be produced.

100. *James' classroom teacher Ms Ranjit Kaur did **not use a formalised behaviour management plan**, preferring to use her own work program. She did not seek the assistance of a multi-disciplinary team. [87]*

101. *[87] In 2007, James' teacher Ms Heather Mosley also employed a range of behaviour management strategies and gave evidence that these strategies were recorded in a formal behaviour management plan, **though no such document was available** for production at trial.*

102. Three different teachers, three invisible behaviour plans.

103. From a DET Statement of Defence dated 16 May 2014⁵⁴ regarding a young primary school boy subjected to repeated restraint.

*"There were written and **unwritten behaviour management plans** in place"*

104. When plans are not written down, the goals, specific strategies and desired outcomes for individual students are unclear or even completely unknown by school staff, consultants and parents.

105. In this case, Placing HP in the store room (referred to euphemistically as the "safe space") was a measure taken to "enforce" the "behavioural standards" of the school and "reduce restraint". We therefore have a claim that seclusion is reducing restraint. Clearly either school staff members or DET Legal Department may actually believe that one restrictive practice cures another. What is a conundrum is whether DET actually believe the evidence they give to courts and tribunals, or that they are corrupt enough to give false information in order to defend their practices and staff in a legal complaint. It is hard to decide which situation is worse.

⁵³ K v State of Victoria [2013] FCA 1398

⁵⁴ HP v State of Victoria A34/2013

106. Until this "law and order" approach to challenging behaviours in children with disabilities is replaced by thoughtful, sophisticated evidence-based approaches based on psychology, restraint and seclusion will continue in Victorian government schools.

Examples of behaviour plans

107. And what do such Behaviour Management Plans look like?

- a. Behaviour Plan 1. Golden Square Primary School.⁵⁵
This was reported to the writer as being for a child in Grade 1.
Recalling the "traditional behaviour approach" allegedly eschewed by DET, we have the following:

*You are expected to do your work.
You need to sit on the floor during group time.
You need to listen when it's not your turn to speak.
If you are not following the teachers instructions or hurting other students feelings your name will be put on board (sic) and an explanation given. [Inappropriate behaviour consequences will be followed].*

Note the threat of humiliation in front of the rest of the class by having the child's name written on the blackboard.

However, among other firm directives, the following must be the most inappropriate.

If threatening, aggressive or at risk of hurting self or others in line with ministerial order 184, then Suspension will occur.

- b. Behaviour Plan 2. Golden Square Primary School.

In response to the writer requesting to know why a Behaviour Plan had not been put in place for a young girl ("Jane") who had been subjected to multiple instances of physical restraint and is too traumatised to attend school due to her school experiences, Regional Director Jeanette Nagorcka responded with the following in a letter to the writer dated 24 June 2014.

I refer you to some examples of these below and indicate the documents they are drawn from:

- *Classroom suggestions:*

⁵⁵ See Attachment 14.

'xxxxx mentioned that Jane has an iPad and it is filled with her video creations. This may prove useful as a settling activity in the morning.'

- *'Emotional engagement: set up for success where possible. Consistent friends/buddies to encourage play and return to class'*
- *'Implement a program that addresses Jane's sensory issues'
(Feb 12 2013 ILEP)*
- *'Unsettled behaviour: if Jane is crying, screaming or unsettled in any way she will remain in well-being room until she is calm. Once calm, she can watch her DVD and follow the (agreed) plan'*
- *'If Jane becomes unsettled in class, Jane will be removed to the well-being room where staff will follow (the agreed) plan'
(190713 Engagement Plan July.doc)*
- *Education Support Staff:*
 - *'Work with the class teacher to develop an appropriate modified learning program (and) implement a program that addresses Jane's sensory issues'*
 - *'Provide support and consistency to ensure the day is more predictable for Jane'*
 - *'Redirect and intervene in a timely manner ie. to de-escalate situations rather than waiting for another staff member to get the classroom to assist'*
- *'Learning tasks will be differentiated to suit Jane's learning style to promote successful outcomes that will ensure a positive day'
(200913 Engagement Plan July.doc)*
- *'Jane to take responsibility and time how long she works and how long she plays. More play than work, work needs to be simple, on laptop not pencils'.
(PSG 16 Sept.doc)*

Ms Nagorcka's (and presumably the regional psychologist's) view was that pulling random sentences out of a number of documents constituted a Behaviour Plan.

No Functional Behaviour Assessment, no goals, no detailed description of behaviours that needed to be mitigated, no measurable outcomes, and therefore nothing to measure. Suffice to say, the "Plan" was an abject failure. If anyone wanted to view the "plan", they would have to be drawn to a number of different documents.

- c. Individual Behaviour Plan 1. Marnebek School. 2010⁵⁶.

Strategies

If his behaviour escalates (sic) and you find the need to restrain him, he will lash out with kicking and biting. He is best to be escorted to the timeout room with two people.

Here, seclusion is actually written into the plan, along with restraint to get the child to the room.

- d. Individual Behaviour Plan 2. Marnebek School. 2011⁵⁷

Possible Triggers

"timeout/exclusion for a negative behaviour often escalates his behaviour."

And of course there is a reason for that, which is that behaviours are not effectively addressed by seclusion and exclusion - they are worsened.

- e. Individual Behaviour Plan 3. Marnebek School. 2011/2012⁵⁸

Triggers - Time out

To clarify, under the list of figures for challenging behaviours (second from the left) you will "timeout" which we know to be seclusion at Marnebek. Here Marnebek School is identifying what is obvious to most behaviour analysts and clearly in the literature - seclusion does nothing except to cause trauma.

- f. Excerpts from a Behaviour Management Plan from Ballarat Christian College 2012.

****If you have seriously threatened or vilified a student or staff member at any time you will be removed from your class and will remain there until you are collected. Your family will need to attend a parent teacher conference before we can consider your return.*

You will be given one warning that the way you are behaving is not ok. On the second morning you will be asked to go to a Headteacher so that your classmates can concentrate on their work.

If you seriously disrupt the learning environment a third time in one day, you will be sent home and asked to stay home on the following day. We all need to be clear about the consequences of your choices.

⁵⁶ See Attachment 14A

⁵⁷ See Attachment 14B

⁵⁸ See Attachment 14C

If there are six times in a week where you need to be removed from class (these will be recorded) we will call a meeting with your family and teachers to discuss where we go from here.

The Plan had more detail, including a requirement for the student to sign an "agreement".

The child in question had ADHD. Needless to say, he did not last at the school, was excluded from activities such as the school camp as punishment for his behaviours and his parents sensibly withdrew him. He did not seem to have the same behavioural difficulties at his new school. A number of students with disabilities have been withdrawn from Ballarat Christian College.

Functional Behaviour Assessment

108. A Functional Behaviour Assessment ("FBA") is an assessment based on evidence where the aim is to determine the function of a challenging behaviour in order that you can then effectively address that behaviour. It is a psychological intervention, available to be used in preference to violence.
109. The writer has seen only one FBA emanate from a Victorian School after a consultant was brought in. It did not reflect the professionalism of such an assessment being performed by somebody with the appropriate qualifications. As is often the case, only the threat and then subsequent lodging of a legal complaint obtained such an assessment, despite this young primary school girl being subjected to restraint.
110. While a number of special schools have begun writing about the importance of behaviour analysis in some of their documentation, their practices continue to be restrictive, because they are not trained in behaviour analysis and do not have the funding from DET to pay for someone who is.
111. An FBA is something which, when a behaviour is mild, may be completed by teachers trained in the exercise by someone who is suitably qualified. However when behaviours are significantly challenging, particularly challenging enough to warrant (in the minds of DET) restraint and seclusion, then such assessments must be done by someone qualified to do so. This has passed DET by, who continue to claim that their staff are competent to undertake such assessments, despite no formal training, and despite evidence over months and years that their positive behaviour plans are ineffective.
112. An FBA requires thorough data collection and careful analysis. There is a plethora of information about Functional Behaviour Assessments⁵⁹, and Australia is fortunate enough to have a number of Board Certified Behaviour

⁵⁹ <http://www.educateautism.com/functional-behaviour-assessment.html>

Analysts in the country - holding the highest qualification internationally. DET do not use them.

113. Rather than data collection, for example, we have "anecdotal" notes taken, in all manner of forms, and not even such anecdotal notes are available when asked for. When a staff member from Marnebek School was being asked in a tribunal hearing at VCAT last year as to where her claimed "anecdotal" notes were that informed her alleged behaviour analysis, her answer was "*Possibly in my garage*"⁶⁰. And so to add to the collection of invisible documents and processes, we have the arrival of the invisible Functional Behaviour Assessment. A discussion of why teachers are taking personal student documents home (therefore conveniently out of the reach of Freedom of Information requests) is perhaps a discussion more relevant to the broader and just recently announced Senate Inquiry into the Education of Students with Disabilities.
114. For the young boy in question with Severe Autism Spectrum Disorder, who had the use of a wrist strap written into his Behaviour Plan (not shown to his parents), who his parents observed being restrained, and who another parent observed being secluded, in the view of Marnebek staff his Behaviour Plan did not warrant any formality in terms of what it was based upon, and did not warrant being shared with those who know him best, his parents.
115. It did not matter that this child was being dragged from his family's car in the mornings due to not wanting to enter the school grounds. It did not matter that this child was starting to self harm by knocking his head into the ground and saying he did not want to go to school. It did not matter that this child's behaviour deteriorated to a point where it was clear he was experiencing extreme trauma.
116. In Marnebek's view, an untrained "Behaviour Analyst" continued to advise staff, and behaviour plans were rolled over month after month, despite their ineffectiveness, until the family withdrew their child.
117. Leaving Marnebek School and the culture of behaviours and consequences, restraint and seclusion, happily changed this child's life and he now enjoys a mainstream school without violence, and professional programs based on behaviour analysis.
118. It is inconceivable that when children are being treated violently in schools by teachers, that appropriate professional assistance is not being engaged in order that all evidence-based psychological approaches are provided.
119. While FBAs are common practice in some areas of service provision, and particularly in other countries which have a more sophisticated approach to dealing with the challenging behaviours of people with disabilities, DET

⁶⁰ Ms Lauren Wood, *HL v State of Victoria and Karen Dauncey* Tx 552

continues to comfortably operate in the dark ages, preferring instead to use its lockable indoor and outdoor "safe" rooms, and restraint.

120. This is unacceptable.

121. It is worth noting that the boy in receipt of the invisible behaviour plans set out in paragraphs 98-104 and described so negatively in paragraph 92 suddenly lost all his challenging behaviours upon moving to a school that used professional staff trained in behaviour analysis. He is not the only Victorian child with Autism Spectrum Disorder that has moved overseas just to receive evidence-based teaching from competent staff.

Rejection by DET of evidence-based practice

122. As mentioned above in paragraph 6, school staff demonstrate continuously that they do not understand the term "evidence-based" practice, however more dangerously, when brought to their attention, DET formally reject such practice.

123. In *K v State of Victoria*⁶¹ DET strenuously argued against the suggestion that Applied Behaviour Analysis ("ABA") should be seen as a proper and reasonable intervention for it to use in the education of students with Autism Spectrum Disorder.

124. This leaves the Victorian DET out on a limb in terms of international research and approaches, and is an educational embarrassment as far as best practice goes. Putting decades of international research aside, and the findings of the National Standards Report⁶² (perhaps the largest meta analysis of its kind ever undertaken) Australia has also produced reports which arrive at conclusions commensurate with international research in relation to ABA.

125. In 2011, a report was published⁶³ by the Australian Society for Autism Research, contributed to by professionals from The University of Melbourne, Griffith University, the University of Queensland, the University of Melbourne and the Royal Children's Hospital. It concluded that the only established evidence based intervention for Autism was ABA.

126. The National Autism Center Report, breaking down the components of ABA individually, covered adults up to the age of 22 years old.

127. However in Australia more generally, the ongoing mis-characterisation of applied behavior analysis research in Australian institutions is one systemic and significant problem that stunts the implementation of evidence based practice and contributes to the problem of violence, abuse and neglect of children with autism.

⁶¹ *K v State of Victoria* [2013] FCA 1398

⁶² "The National standards Project-Addressing the Need for Evidence-based Practice Guidelines for Autism Spectrum Disorders" National Autism Center 2009

⁶³ *A Review of the Research to Identify the Most Effective Models of Practice in Early Intervention for Children with Autism Spectrum Disorders* 2011

128. Below is an example of significant errors in work funded by the National Health and Medical Research Council NHMRC and conducted by ¹Uncle Bobs Child Development Centre, Department of Developmental Medicine, The Royal Children's Hospital, Melbourne, Australia.

A 2013 landmark court case in Florida USA (details noted below) highlighted significant errors in the research work of Australian Autism researchers Boyd and Spreckley. Their work can be found here <http://www.altteaching.org/Docs/efficacy.pdf>

Spreckley and Boyd's error was to the effect that they reported that ABA does not provide better outcomes than other therapies. The defendant used Spreckley and Boyd's research to justify a denial of ABA service provision. The plaintiffs expert witness Dr Jon Bailey, explained the error in Spreckley and Boyd's analysis and that single subject research design is an evidence based approach . The following is a quote from the judgment document;

"The Spreckley and Boyd meta-analysis (which was also used in the Hayes Report) was published in the Journal for Pediatrics, which would ordinarily be considered "reliable evidence." See id. However, Dr. Bailey testified that the Spreckley and Boyd meta-analysis made a clear error in its evaluation of the Sallows and Graupner study. Dr. Bailey cited to a letter to the editors of the Journal of Pediatrics from Smith, Eikeseth, Sallows, and Graupner, and Dr. Bailey testified that the authors stated that Spreckley and Boyd misrepresented the findings in the Sallows and Graupner study. Dr. Bailey further testified that the authors claimed that removing the mischaracterized Sallows and Graupner study from the Spreckley and Boyd meta-analysis would show that ABA yields significant findings on three of the four outcome measures in the meta-analysis. The Hayes Report did not mention this letter to the editor. It was also not included in the materials Bradford reviewed and turned over to Kidder, and Kidder did not review the subsequent discourse published in the Journal of Pediatrics. Dr. Bailey testified that this letter to the editor of the Journal of Pediatrics exemplified the peer-review process, whereby studies get published in the public domain and everyone in the field may examine them and respond."

The following is also a quote from the same judgment document

"Based on the testimony and exhibits at trial, the Court finds that the determination by AHCA that ABA is experimental was arbitrary, capricious, and unreasonable both in its process and in its conclusion."

(Case 1:11-cv-20684-JAL Document 187 Entered on FLSD Docket 11/05/2013, K.G., by and through his next friend, ILIANA GARRIDO, I.D., by and through his next friend, NILDA RIVERA, and C.C., by and through his next friend, RACHELLE CRAWFORD, Plaintiffs, v. ELIZABETH DUDEK, in her official capacity as Secretary, Florida Agency for Health Care Administration, Defendant, http://www.autismspeaks.org/sites/default/files/docs/ASLRC/fl.dudek_perminj_11.13.pdf).

This landmark case is worthy of careful consideration for its examination of definitions of “evidence based practice” and its finding that single subject research methodology is a valid form of research consistent with the UN Charter of Human Rights. These themes are expanded further by Association For Science in Autism Treatment <http://www.asaonline.org/research-treatment/research-synopses/comments-on-spreckley-and-boyd-2009-efficacy-of-applied-behavioral-intervention-in-preschool-children-with-autism-for-improving-cognitive-language-and-adaptive-behavior-a-systematic-review-and-m/>

129. Despite having approximately 40 Board Certified Behaviour Analysts in Australia (being the minimum qualification internationally to work as a Behaviour Analyst and supervise ABA programs) DET does not use Board Certified Behaviour Analysts to assist with the hundreds of children that are subjected to restraint and seclusion in Victorian schools. The fact that they do not feel it necessary is hard to understand.
130. The fact that the Australian court case mentioned directly above had DET arguing against the application of ABA but clearly for (as was the evidence in this court case) restraint, seclusion, and training of staff by martial arts experts, one wonders what is in the minds of senior DET bureaucrats.
131. *"Building capacity for evidence based practice is one important element and providing the enforceable right in the law for people with disability to receive effective treatment is another. I suggest the inquiry look at legislative provisions in the USA which address both of these elements. The USA is not perfect, but it has made considerably more progress than Australia and now has a mature body of legislation protecting the human rights of people with disability."* This statement is from one of the writer's clients who has had to move to the USA in order for her son to be firstly, educated, and secondly, to be safe from abuse, which was his experience at Victorian schools.
132. Thirty-two other nations including China and New Zealand offer Behaviour Analyst Certification Board approved course sequences in their universities. Australia urgently needs to catch up.
133. The Victorian Auditor General's Office identified in 2012:

Since 2006, DEECD has distributed more than \$2.6 billion to schools through the PSD.

However, DEECD does not have the information it needs to determine whether PSD funding is being used efficiently and effectively. Concerns raised about this by VAGO in 2007 still have not been adequately addressed and instead of having five years worth of high-quality data about the program, the department still knows very little about its impact on the educational outcomes of supported students.⁶⁴

134. *"Proper funding in theory should support ethical and accountable practice but not without clear unambiguous practice and ethical guidelines, appropriate credentialing, proper regulation and proper mechanisms for addressing consumer complaints. Unfortunately high remuneration with low levels of accountability and no requirement for formal credentials in evidence based practice is a powerful contingency supporting unethical practice." The writer's client.*

135. The thrust of the Victorian Auditor General's comments, are that DET does not operate from an evidence base. The relevance to this submission is that evidence-based responses to challenging behaviours will prevent abuse.

The link between the refusal by DET to use professional practice to prevent challenging behaviours

Language/Communication

136. If not clear already, it is the writer's submission that much of the abuse of children with disabilities in Victorian schools comes from the manner in which school staff respond to challenging behaviours.

137. It is therefore worth looking at another contributing factor to such challenging behaviours, which is the failure to provide a child with complex communication needs, a communication method.

138. The link between language disorder and challenging behaviours is well-known.⁶⁵ However putting the research basis aside, it is not difficult for the average person to appreciate that if you cannot communicate your needs, significant frustration follows. Behaviours have a function. When one cannot convey one's thoughts through language, one attempts to convey them through behaviour.

⁶⁴ Victorian Auditor General's Office "Programs for Students with Special Learning Needs" p viii

⁶⁵ Cohen, Menna, et al., 1998; Cohen, Davine, Horodezky, Lipsett, & Isaacson, 1993
Cantwell & Baker, 1991; Moffit, 1993

Conti-Ramsden & Botting, 2004; Botting and Conti-Ramsden (2000)

Beitchman et al., 2001; Beitchman, Brownlie, & Wilson, 1996; Beitchman, Nair, Clegg, Ferguson, & Patel 1986

139. Therefore there is another imperative to ensure that children have an effective communication method, in addition to having the means to communicate abuse.

Case Study 1A

JW has Severe Autism Spectrum Disorder with receptive and expressive language disorders being sufficiently severe that while attending Marnebek School in 2010, 2011 to May 2012, he was mostly non-verbal.

This was a significant problem, as J was developing behaviours that did not so much present harm to anyone else, but were behaviours of distress, including self harming. He was able to communicate at times with one or two words. His speech was rated as "unintelligible" by Marnebek School documents.

In 2 1/2 years, despite Marnebek School having a Speech Pathologist on staff, J did not have a formal language assessment. Despite the importance of having a consistent approach to language acquisition between home and school, the Speech Pathologist never met with J's mother during 2011 to discuss any language program, and indeed there was no language program documented.

The Speech Pathologist introduced a few Compic cards and then claimed to be providing a PECS (Picture Exchange Communication System) program. Consistent with DET practice, the "program" did not exist in any documented form - there were no goals, strategies or measurable outcomes. There was no discussion with J's mother as to whether the child had used this form of communication before, and how successful it was. As the alleged "program" was invisible, the family, had they chosen to do so, could not have used it at home in order to provide consistent language acquisition.

Putting aside the invisible program and the choice of communication not known to J's mother, J did not receive an individualised 'PECS book' until September 2011. Apart from the fact that most of the year was over, the decision in the written Speech Pathology notes was that the method was used at lunchtimes.

In 2012, the formal Speech Pathology Program for JW was written thus:

"J will be able to use PECS to request items using SVAO sentences 80% of the time during speech therapy sessions with minimal prompting."

There was no underpinning document. There were no long-term goals, short-term goals, strategies and measurable outcomes. There was no data collection that reflected anyone recording any movement towards this extraordinarily vague goal. In a VCAT⁶⁶ discrimination case brought by JW's mother, the Marnebek Speech Pathologist stated her belief that this one

⁶⁶ RW v State of Victoria (Human Rights) [2015] VCAT 266

sentence constituted, along with a few file notes, a formal program, and expressed acceptable measurable outcomes.

Despite a senior and experienced speech pathologist giving expert opinion to the contrary, DET urged VCAT to accept that speech pathology programs do not need to be written, and that in their invisible form, do not need to be conveyed or discussed with the parents, and that formal individual language assessments of the child were not necessary in forming a view about which communication method a child should have.

PECS, putting aside the fact that there was no evidence at all of a formal PECS program, is claimed to be provided to individual children at Marnebek because Marnebek has a "whole class approach"⁶⁷ which focuses on the use of PECS, whether children are verbal or non-verbal. In other words, the choice of communication provided to children was not based on individual assessment and individual need, but school policy.

140. Therefore we can conclude, given the involvement of DET in this case of senior bureaucrats, not only Marnebek School staff, that DET endorse the following speech pathology approach to students with complex communication needs.
- a. no formal individual language assessments are required to make decisions about language/communication approaches;
 - b. decisions on communication method are made according to what the school adopts as a policy, rather than on individual need;
 - c. language programs can be so informal that there is barely any evidence of such programs;
 - d. best practice speech pathology approaches whereby goals are written, strategies are written, measurable outcomes are identified, progress documented and measured against goals, are unnecessary;
 - e. schools do not need to inform parents of any language approach they are taking with the child, whether to seek parental input, or ensure consistent approach;
 - f. effective language/communication is not seen as something required for classroom learning, but seen as an "add-on" to be informally engaged with in recess and lunch times;
 - g. the requirements of PECS which make it an evidence-based communication method, do not need to be adhered to in any manner or form for school staff to claim they are providing such a program.
141. It should be noted that the writer contacted the group who accredit PECS trainers and in attempt to assert some quality control over the use of the program. It was confirmed with the writer that the PECS program was only evidence-based and effective if it was followed with fidelity. Not one formal PECS document or practice was used by Marnebek School despite its claim that it provided PECS.

⁶⁷ Joanne Flight, Marnebek Allied Health Clinical Services Team Leader

142. When J's mother transferred J to a mainstream school, he:
- immediately began to receive a formal language program where his speech improved;
 - speech goals were written down in order that J's family were able to support the vocabulary J was learning at school;
 - there was data collected every week on J's progress in order that teachers, aides, parents and practitioners were aware of his progress.
143. DET submitted to VCAT that what is immediately above, is "gold standard". What is written immediately above is simply good practice, and when one is considering the importance of communication and the child who has complex communication needs, it should not be too much to expect that good practice, or even best practice, be instituted.
144. Needless to say, J's ability to communicate has improved every month now as opposed to when he was at Marnebek School. His ability to communicate with his family has improved significantly, leading to reduced distressed behaviours, and increased ability to report abuse.

A "last resort"

145. The defence used by DET when justifying its use of violence against children with disabilities, is usually that their staff had no choice. Or that the child was going to injure another child or staff member.
146. It will never be a last resort to use restrictive practices against children with disabilities, practices that can injure and kill, unless a Functional Behaviour Assessment (performed by somebody with the appropriate qualification and skills) has been completed, and a Positive Behaviour Plan developed from such an assessment, monitored, supervised and evaluated by someone trained in behaviour analysis. Invisible Behaviour Plans, with invisible data collection, are no substitute.
147. The writer refers back to the examples of Behaviour Plans to assist the reader to understand the current abilities of DET staff to be responsible for such plans.

Victimisation of Those Making Complaints

148. DET does not welcome complaints.

Advocates

149. As a high profile advocate outspoken against unprofessional practices and abuse, the writer has been subjected to the following.

Subpoena

150. In November 2011, the writer received a subpoena from Allens Lawyers, the Department's lawyers of choice, requiring her to give to the court (and therefore DET) the following documents:

All records, including e-mails, facsimiles, letters, file notes, forms, memoranda relating to a young boy with Autism Spectrum Disorder between the writer, his parents, any practitioners or any other person.

151. The result of this was that thousands of documents including e-mails, many of which were regarded as private by the parents and the writer were required to be retrieved, printed and collated. The task was so significant that the writer was unable to function in other aspects of her job while seeing to the subpoena. The stress and distress placed upon the writer and the family of the child with a disability was substantial.

152. DET then ran a court case attempting to prove that the documents between the writer and the family should be produced and exposed. DET used taxpayers money through the use of one of the most expensive law firms in Victoria, a Senior Counsel, and a junior barrister to attempt to force the writer to release these documents.

153. In this interlocutory fight, the parents, the writer, and the parents' law firm as a separate entity, were all required to be legally represented. The cost to the writer was over \$2000 simply in barrister fees.

154. Ultimately, the decision by Gordon, J of the Federal Court ⁶⁸ was that one document be produced, and the State of Victoria pay all costs. The writer has not been willing to create an invoice for the time spent responding to the subpoena, knowing that the Victorian taxpayer is liable for these fees, and a few hundred thousand dollars in other legal fees for the other parties to this hearing.

155. The documents were not necessary for the running of the complaint, the attempt to force disclosure not model litigant behaviour, and the entire process an exercise in intimidation and victimisation. A costly one for Victorians.

Complaint to Legal Services Board

156. In 2012/2013 a number of complaints were made through DET legal representatives to the Legal Services Board about the writer, claiming that she was engaged in legal practice.

157. One example of the extraordinary lengths gone to was when the DET's legal representatives asked their IT team to examine a document sent directly by a parent to the law firm (Minter Ellison) claiming that the lawyer could not

⁶⁸ K v State of Victoria [2012] FCA 622

open the document. After seeing several words inserted by the writer, the law firm then made a complaint that the writer was providing legal advice.

158. The complaints were not upheld. File closed.

Complaints to Alternative Employer

159. The writer has a paid permanent management job with another organisation. Deputy Secretary Monique Dawson wrote on 3 July 2014 to the Chairperson of that organisation to complain about the writer in her advocacy job, in what the writer could only infer was an attempt to damage her employment and reputation with her employer.

160. When the desired effect was not achieved by that complaint, Deputy Secretary Monique Dawson then wrote to the peak body of that organisation on 3 October 2014 and complained about the writer.

161. As is often the case, the complaints brought no credit to DET and simply made it clear that they will go to quite some lengths to intimidate detractors.

Threats of Defamation

162. On 3 July 2014, Deputy Secretary Monique Dawson wrote a letter to the writer and amongst other things said the following.

"I advise you that the Department is closely monitoring all of your public statements and that legal action may be taken if your statements are defamatory and cause damage to the reputation of any individuals⁶⁹."

Ms Dawson would be aware that a defence to defamation is the truth of the matter, and to date the writer has not received a legal complaint of defamation.

Parents

163. Parents have reported the following responses from schools to the writer after making a complaint:

- a. being banned from entering the school classroom when previously given access;
- b. having Student Support Group Meeting times changed to times when it was known the parent could not attend;
- c. being banned from talking to teachers or entering school grounds on the pretext of "occupational health and safety";
- d. teachers being ordered not to talk to parents;
- e. having all communications restricted to the Principal;

⁶⁹ Letter Deputy Sec Monique Dawson to Julie Phillips 3 October 2014

- f. being made to feel so unwelcome that they felt they had no choice but to leave the school
164. One parent who wish to appeal a court decision was then subjected to an application by DET that she not be allowed to go ahead with the appeal unless she paid a security for costs amount of \$52,943.
165. In dismissing the application, Mortimer J stated⁷⁰:

The potential chilling effect of requirements to provide security for costs on individual litigants are well recognised, and the impediment which such orders could otherwise impose on access to justice means, at first-instance level, an individual impecunious litigant will rarely be ordered to provide security. [34]

Orders for security for costs are capable of interfering with the free exercise of that right both at an individual level and at a more general level because they are capable of being seen as a deterrent to the exercise of the right. [40]

Teachers/Aides

166. Teachers/aides report having experienced the following after simply telling the truth about the abuse of students at disabilities in schools, or on suspicion that they will tell the truth rather than lie for the benefit of the school in question.
- a. Refusal to rehire;
 - b. Communications sent to other schools to boycott employment;
 - c. Termination using questionable termination procedures.
167. It should be noted that the writer is unaware of any teacher or aide who has lost their job for subjecting students to unnecessary violence.

Covering up of inhumane and degrading treatment/illegal treatment of children with disabilities

168. It is the writer's view that some of the actions taken by DET senior staff in the refusal to investigate the abuse of children with disabilities, and the covering up of that abuse, could amount to corruption or perverting the course of justice.

DET FOI Department

169. Of significant concern is the role of the DET Freedom of Information ("FOI") Department. A number of the writer's clients have found months after

⁷⁰ Kiefel v State of Victoria [2014] FCA 604

a FOI request that numerous documents were in existence that were not provided to them. To make it clear, it is not suggested in these cases that the documents were deliberately withheld by the DET FOI due to claimed exemptions under the *Freedom of Information Act 1982*. It is claimed that DET FOI hold back documents which may implicate DET in violence, abuse or neglect.

Case Study 1

Mrs Smith made an FOI Request for all documents relating to her son "John", including school minutes of meetings. John complained that he had been subjected to repeated seclusion at Western Autistic School. Mrs Smith found many months later that minutes of meetings had not been provided to her, coincidentally with references to his seclusion area contained within them.

Case Study 2

Mrs Smith made an FOI Request. Her son with Autism Spectrum Disorder had been subjected to physical restraint at Maple Street Primary School. A significant time later, Mrs Smith, was provided with minutes of meetings which had not been previously provided to her. Not only were they not provided through DET FOI, they appeared to have been falsified, as a number of them replicated each other either in part or in whole. A complaint to Deputy Secretary Monique Dawson provided an unsatisfactory explanation.

170. At times it is difficult to know whether documents are not provided because they do not exist, or because they are being held back by the DET FOI Department.
171. The parent of a child mentioned in paragraph 54 who was being restrained every morning at Specimen Hill Primary School for up to 45 minutes recently made an FOI request. She received a response stating that the following exemptions would be applied to her request - those falling under "internal working documents", "documents affecting personal privacy", "documents containing material provided in confidence".⁷¹
172. The parent does not know which exemption section has been applied to which document, but she did not receive one incident report or record of her child being restrained, despite a clear admission that it was occurring regularly.
173. A moment for pause. Given the serious nature of restraint (and the lack of any detailed guidance about it) it is prudent to consider what non-DET organisations have to say about restraint given its dangers. The NSW

⁷¹ Letter from Mr Gordon Caris Assistant Executive Director, dated 24 June 2015

Government position for prone restraint is a maximum of 2-3 minutes⁷². The child in question was only seven years old. The danger was extreme.

174. Despite the danger, either every single episode of restraint was undocumented, or DET are holding the documents back.

175. Either way, it is clear that Victorian parents have no idea what is happening to their children, and the position of DET is that they have no right to know. This is, the writer submits, unacceptable and dangerous.

Conduct and Ethics Department/Legal Department

176. On numerous occasions, the responses that the DET Conduct and Ethics Department have provided to the Australian Human Rights Commission have been proven to be false.

177. Under the *Disability Discrimination Act*, it is a criminal offence for a respondent to make a false statement to the Commission. The Australian Federal Police have proven to be disinterested in receiving such complaints.

178. The exact relationship between the Conduct and Ethics Department and the Legal Department is unclear. What is clear is that between them they have the responsibility of responding to legal complaints against DET. It is during court cases and in the lead up to those cases that very disturbing approaches have been taken to cases involving restrictive practices against students with disabilities.

179. In *K v State of Victoria*, the legal representatives for DET successfully prevented affidavits from numerous parents who attempted to give evidence about the restraint and seclusion of their own children at schools the complainant had attended.⁷³

180. DET used many arguments to try and prevent these parents from giving evidence, one being that the severity of the disability of one child was not sufficiently same as the other:

Mr xxxx has a son who, like the applicant, suffers from autism spectrum disorder, but, I was told from the bar table, suffers more severely from that condition than does the applicant.[8]

181. This was untrue. The writer was sitting in the body of the court for the trial and the evidence from the teachers were that the applicant had the most severe Autism and behaviours they had dealt with.

182. The other argument presented was that while some of the other parents were claiming that their children were secluded in a room, the

⁷² Position Paper "Aggression, Seclusion and Restraint: Preventing, Minimising and Managing Disturbed Behaviour in Mental Health Facilities in New South Wales June 2012

⁷³ *K v State of Victoria* [2011] FCA 1301

applicant in the case could only point to being told to stand behind a whiteboard (decision[7]). The Judge in the case decided, at the urging of DET, that these experiences were too dissimilar.

183. At trial it then was revealed that the young boy had been forced into the bathroom/toilet on approximately 10 occasions, sometimes with the door shut. However it was all too late by the time the trial was in process, despite it being clear that at the interlocutory hearing, the information provided to the court was untrue.

184. There are numerous other examples of:

- very disturbing evidence given at trial and in submissions by DET which does not seem to be in keeping with their public stance;
- approaches towards litigation which can only be seen as victimising and aggressive against families of children with disabilities and their advocates;
- approaches towards litigation which see the expenditure of millions of dollars to private law firms, sometimes to see a case settle immediately before a trial, or even in the middle of the trial.

185. Only a Royal Commission with full investigatory powers would be able to investigate these issues adequately and decide who requires such large sums more urgently - schools/teachers/students with disabilities – or law firms.

Marnebek School

186. On 6 January 2014 three parents wrote to then Minister Martin Dixon⁷⁴. The letter was about the abuse of children with disabilities at Marnebek School. Excerpts of their letter include the following:

Marnebek School is a special school for children with disabilities. For a number of years it has been using abusive practices such as:

- *Locking children by themselves in a small empty room in the dark as punishment for behavioural problems.*
- *Mechanical restraint - leading children around the school on wrist straps.*
- *Locking children in external courtyards by themselves as punishment for behavioural problems.*
- *Locking children in a cage built in a classroom.*
- *Physical restraint - physically restraining children who will not sit still.*

⁷⁴Attachment 15 Letter to Minister Dixon from three parents 6 January 2014

These practices have been widespread, and there are other parents in addition to the undersigned, who have witnessed these practices and would be prepared to speak about them. A number of teachers, if given protection from retribution by the Department of Education would also give evidence about these practices.

187. Minister Dixon gave responsibility for following the matter up to Deputy Secretary Nicholas Pole. Mr Pole wrote a letter back to those parents⁷⁵ comprising seven sentences, including the following:

I understand that there are proceedings that the Victorian Civil and Administrative Tribunal and the hearing has been set down commencing 11 March 2014. During this hearing you other witnesses will be able to give evidence under oath to an independent tribunal.

In the meantime, I have requested the Regional Director of the South-Eastern Victorian Region, Mr John Allman to look into current practices at Marnebek School with a view to identifying any specific issues which require appropriate attention.

188. It is important to note two things. The VCAT hearing was a complaint under the Equal Opportunity Act. It was not a complaint under the *Crimes Act*, nor a direct complaint of abuse. DET requested that VCAT actually disallow any questions regarding the timeout room. VCAT helpfully acquiesced with DET's request.
189. Secondly, the parents had discussed issues that were "widespread", clearly implying that other children had been suffering abuse.
190. One finds it hard to imagine how a senior bureaucrat of a government department responsible for the education and safety of vulnerable children with disabilities could in essence say that he was not interested in investigating any treatment of children that had occurred in the past. It is unlikely, (perhaps apart from the Catholic Church), that any other organisation would respond in this manner.
191. The reason given, ostensibly, for refusing to discuss the complaint, being that one of the parents had a legal complaint against DET, indicated a decision to sacrifice the health and well-being of, for all Mr Pole knew, numerous children, who may have been subjected to inhumane, degrading and illegal practices.
192. It was for exactly this reason, that the parents asked for an "independent" investigator - in that there is a widely held view that DET are corrupt at worst, and at best are led by people who endorse violent practices used against students with disabilities.

⁷⁵Attachment 16 letter from Nicholas Pole dated 4 February 2014

193. The exact words the parents used were these:

As an internal inquiry would involve the Department of Education investigating itself, we request that an independent investigator, such as the Office of the Public Advocate or retired judge be appointed to undertake this investigation.

194. Despite the fact that it had been made clear to Mr Pole that there were other parents and staff willing to discuss abuse at the school to an independent person, ultimately in a letter to the writer Mr Pole said this:

As a result of receiving information from John Allman, Regional Director and Denise Ramus, Deputy Regional Director, South East Region Victoria I have decided that no further action is warranted in relation to the allegations in your clients' correspondence to the Minister 6 January 2014 and to me on 13 March 2014 and your correspondence to me on 15 and 19 March 2014⁷⁶.

195. Mr Pole attempted to take the high road in a later letter no doubt wondering why at this stage all the parents had instituted legal action against DET, and stated "*It is unfortunate that you and your clients were unable to take up my offer of a meeting in April to discuss your concerns.*"⁷⁷

196. The writer's clients had never wished to meet with Mr Pole.

197. So to pause, Mr Pole declined to appoint someone who he was told could have received information from a number of parents and staff about abuse in a school. He declined. He made a decision without even receiving reports that he knew were available.

198. Instead, the situation was that Marnebek School were given a 'free pass' for anything that had happened in the past by virtue of the fact that Mr Pole's position was that it should not be looked into. He then takes the word of Mr Allman, best known for shredding documents prior to his appearance at the IBAC (Independent Broad-based Anticorruption Commission) Corruption Inquiry⁷⁸, before being sacked.

199. And despite parents and a former staff member giving evidence on oath, some of it completely unchallenged, that students were being subjected to inhumane, degrading and illegal practices in a VCAT hearing, no senior member of DET has demonstrated any interest in speaking to others who have no legal complaint against DET, but could inform them of these practices.

⁷⁶ Letter Nicholas Pole to Julie Phillips dated 9 May 2014

⁷⁷ Letter Nicholas Pole to Julie Phillips Dated 21 July 2014.

⁷⁸ <http://www.theage.com.au/victoria/ibac-education-department-official-john-allman-destroyed-evidence-on-corruption-hearing-told-20150430-1mvwrz.html>

200. The seriousness of Mr Pole's refusal to even appoint someone to hear evidence of abuse against children with disabilities in Victorian government schools gives a clear reflection that DET are completely disinterested in this problem at best, and at worst, endorse the abuse of students with disabilities.

Bendigo Special Developmental School

201. On 26 January 2010 and 6 October 2010 a teacher at Bendigo SDS wrote to then Regional Director Mr Ron Lake and advised him of practices at the school including:
- a. Forcing a child under a hand dryer as a consequence of inappropriate behaviour, knowing the child was frightened of hand dryers.
 - b. Physical Restraint.
 - c. Children locked in cages within classrooms.
 - d. Staff screaming at children.
 - e. One child spending most of the year in a cage in the classroom.
 - f. Staff pinching children.
 - g. Staff using pressure points to move children around.
202. The writer has evidence of some of these practices through school documents, and through contact from parents.
203. Mr Lake did not respond to either letter, and nor did any DET staff member on his behalf. Mr Lake has been named in the IBAC corruption enquiries⁷⁹.
204. The teacher was terminated. Interestingly, one of the steps in the termination process was that the Principal claimed that the teacher's Individual Education Plans were not detailed enough. The official position of DET, and a position put forward to the Federal Court, is that not only do Individual Education Plans not need to be detailed, but they do not even need to exist in any form but in a teacher's head. More evidence on this will be provided to the Senate Inquiry into education however the evidence forms court decisions and is accessible to the public.
205. Therefore either this teacher has been the victim of a corrupt process, or the corrupt process is occurring before the Federal Court.

Monash Special Developmental School

206. In early 2014, multiple complaints of which Deputy Secretary Monique Dawson was aware of were made about Monash SDS including the strapping of children with disabilities to chairs for the convenience of staff. The Principal

⁷⁹ <http://www.theage.com.au/it-pro/government-it/ultranet-shares-and-jobs-scandal-snares-victorias-education-department-20141111-11kk3l.html>

<http://www.theage.com.au/victoria/ibac-department-secretary-tried-to-choke-me-claims-exemployee-20150520-gh5rk8.html>

of that school is Ms Helen McCoy who appeared in the Herald Sun newspaper⁸⁰ and was quoted as holding Power of Attorney for Anne Hamilton-Byrne, former leader of The Family, a cult whose members were sued successfully for the abuse of children⁸¹.

207. The writer took it upon herself to contact one of the "children" of the cult to confirm that Ms McCoy was involved with Ms Hamilton when Ms Hamilton was more active within the Family. The person identified Ms McCoy. Ms McCoy is in charge of a Special Developmental School, responsible for the most vulnerable children in the state. Needless to say Ms McCoy remains in her position, and the parent whose child was strapped to chairs has not received one word of recognition that such actions are inappropriate or apology.

Alfredton Primary School/Wendouree Primary School

208. The writer made a complaint to DET Grampians Regional Office about the repeated restraint and illegal imprisonment of a young boy with Autism Spectrum Disorder. See Case Study 3.

209. The Acting Deputy Regional Director claimed to have investigated and, as is DET practise, advised that in his view staff had responded appropriately. When a complaint was made to the ombudsman, Mr Peter Henry could not offer one single document, or even an e-mail, that gave any evidence that the matter had been investigated. Like the invisible Individual Education Plans, invisible Behaviour Plans and invisible Behaviour Analysis, we were now introduced to the invisible investigation. Given the high stakes for the child (injury and death) the fact that a senior DET staff member believed that an investigation that could not be proven to have even occurred was suitable, gives us further insight into DET and how they view the care and safety of vulnerable children. This investigation that could not be seen, unsurprisingly, was endorsed by Deputy Secretary Nicholas Pole.

210. The writer also refers to earlier mention of seclusion rooms being dismantled (paragraphs 38-39) in the face of parent complaints. Destroying evidence of illegal imprisonment, a crime under Victorian law, could, if Victoria Police were involved, be a further offence.

211. The same Principals remain in situ at both schools. The DET Legal Department was involved in both complaints. It is impossible to know whether the destruction of evidence is an initiative of the Principals in question, senior DET bureaucrats or the Legal Department.

⁸⁰ <http://www.heraldsun.com.au/news/law-order/authorities-launch-review-after-links-between-notorious-cult-the-family-and-melbourne-school/story-fni0fee2-1227002815050>

⁸¹ <http://www.heraldsun.com.au/news/law-order/sects-cults-and-ufos-fringe-groups-the-family-raelian-movement-and-real-jesus-christ-among-those-attracting-aussie-followers/story-fni0fee2-1227000092921>

212. A DET psychologist in the Bendigo region who had trained an aide to knock down a child with Autism Spectrum Disorder and subject him to prone restraint without, instead, undertaking a Functional Behaviour Assessment or drawing up a Positive Behaviour Plan, retains his position and has been implicated in the restraint of other children with disabilities since.
213. It is clear from the constant inaction from DET, that they endorse these approaches.
214. Every formal complaint of seclusion violence and restraint against a child with a disability has been defended as being appropriate by the DET Legal Department. Given it is clear they have advised DET staff that shutting students with disabilities in rooms where they cannot get out constitutes illegal imprisonment, (refer paragraph 18) it is then hard to understand their defence of such practices. It is clear that the DET Legal Department's first priority is to assist DET in covering up of/defending the abuse of children in their care, rather than ensure that DET acts within the law. While one might expect this sort of behaviour from lawyers who may work for, say, British Tobacco, the writer suggests it is questionable behaviour for government lawyers working for what is, allegedly, a benevolent government department that has the very serious responsibility of the care of vulnerable children.
215. Given the seniority of these employees of DET, the writer believes it is fair to draw an inference that the use of unnecessary restrictive practices and illegal imprisonment against students with disabilities is sanctioned at the highest level, including the recent former Minister. The current Minister's interest in the topic is yet to be determined.
216. It is unlikely that children with disabilities will be safe in Victorian schools until those responsible for the endorsement and covering up of such practices, and the continued refusal to prohibit seclusion in schools, are sacked.

Bullying

217. Children with disabilities are often the targets of bullying for obvious reasons. Children with cognitive disabilities often do not engender the same understanding and sympathy from their peers as do, for example, children who are blind or are in wheelchairs. Some statistics in relation to Autism Spectrum Disorder and bullying reveal the following.
218. 22 out of 22 parents of children with Asperger's, aged 11-19, reported that their children were being victimised by peers. On average, these children were victimised 1.25 times per week. 23 % of parents reported that their children were victimised two or more times per week⁸².

⁸² Konstanareas, M (2005) "Anxiety and Depression in Children and Adolescents with Asperger Syndrome" in K Stoddart (ed.) *Children, Youth and Adults with Asperger Syndrome*. London: Jessica Kingsley Publishers

219. 94% of 400 parents of children with ASD, aged 4-17, reported that their children had been bullied or victimised⁸³.
220. Children with ASD are 4 times more likely to be bullied than their peers⁸⁴.
221. 160 000 children miss school each day (presumably in the US) because they are afraid of being bullied or harassed⁸⁵.
222. Children have a 75% chance of being bullied throughout their school years from kindergarten until the end of high school⁸⁶.
223. In 1993 27% of middle-school students worldwide reported often being bullied⁸⁷.
224. Many Victorian Schools have not seemed to grasp yet the concept of preventative approaches to bullying, and rather focus on meaningless (to children) bullying policies (for example "zero tolerance") and restorative approaches (reactive). Putting that aside, the writer has had a number of experiences attempting to advocate for students with disabilities who report bullying, and regrettably has experienced a common response.
225. While advocating for a student at Wedderburn College, I received a letter containing the following:
226. "*The College is aware that currently incidents occur which xxxx perceives to be bullying. In all these cases, including those that xxxx has reported, our investigations have indicated that the conduct complained of has been misinterpreted by xxxx or did not in fact occur as he stated.*⁸⁸" [emphasis added]

⁸³ Heinrichs, R (2003) *Perfect Targets: Asperger Syndrome and Bullying – Practical Solutions for Surviving the Social World*. Shawnee Mission, KS: Autism Asperger Publishing Company.

⁸⁴ Little, L (2002) "Middle-class mothers' perceptions of peer and sibling victimization among children with Asperger Syndrome and nonverbal learning disorders" *Issues Comprehensive Paediatric Nursing* 25, 43-47.

⁸⁵ Fried, S and Fried, P (1996) *Bullies and Victims*. New York: M Evans and Company Inc.

Gray, C (2003) "Gray's guide to bullying" *Jenison Autism Journal* 16, 1, 1-60.

⁸⁶ Hoover, JH and Oliver, RJ (1996) *The Bullying Prevention Handbook: A Guide for Principals, Teachers and Counselors*. Bloomington, IN: National educational Service

⁸⁷ Smith, PK and Whitney, I (1993) "A survey of the nature and extent of bullying in junior/middle and secondary school" *Educational Research* 35, 1, 3-25.

⁸⁸ Letter to Julie Phillips dated 20 May 2014, Principal Wedderburn College.

227. In other words, when questioned, the children without disabilities who did the bullying gave a different story to the victim, and they were believed. Meanwhile the victim acquired an adjustment disorder, was ultimately too frightened to attend school and had to leave. As is often the case in North-Western Victorian region, handling of the matter was endorsed by the Regional Director.
228. This is not an atypical example of DET responses to bullying. There is little hope for students with disabilities who are being bullied, when they are disbelieved by school staff. The consequences of bullying are well known to the community, and have included suicide. The question is why wouldn't school staff believe that a child with a disability was being bullied if they reported such bullying. It is difficult to find an answer to that question.
229. It is unclear what it will take to change the attitudes of Victorian schools to the bullying of children with disabilities. It is ironic, though, that if a child with a disability is having a meltdown and may injure another, that child is described as having “assaulted” someone. However when they asked for protection themselves, they are often ignored.

School Buses

230. DET contract bus companies to run buses between special schools and the homes of children with disabilities. There have been numerous examples of abuses reported against children in school buses, including, for example, accusations that a child was tied up on a bus⁸⁹.
231. However the most significant ongoing inhumane and degrading treatment of children with disabilities is the fact that it is DET Policy that children can spend up to 2 hours one way on a bus from their home to the school. That is, in total, **four hours per day**. In that four hours they cannot access toilets, and can commonly urinate or defecate on the bus. They cannot eat or drink. Some children may be strapped into a seat for that length of time due to the fact that, understandably, they do not wish to remain seated.
232. This issue has been raised with DET over a period of years, and they refuse to resolve the issue, which is simply to ensure there are more bus services. The two-hour long trips are not particularly required because children live far away from their school, it is because the number of buses contracted are limited due to a disinterest by DET in spending sufficient money in order to ensure that students with disabilities are treated humanely. A private car running directly to the school may take 20 min.
233. Such treatment cannot be justified. Students with disabilities are suffering simply due to budget constraints.

⁸⁹ <http://www.thecourier.com.au/story/1415058/vcat-damages-bid-after-disabled-child-tied-up-on-bus/>

Complaints Process

234. The writer refers to the entirety of the submission above. The internal DET complaints process is of little use, except that if one wishes to go to the ombudsman one will be referred back to the internal complaints process, and therefore it becomes something that is required. The reason parents ultimately litigate is that they cannot get the slightest satisfaction through any internal DET process. DET personnel at many levels are aggressive, adversarial, and interested only in the protection of their own staff.
235. Regrettably, and inexplicably, DET seem to prefer litigating rather than making any admission. This is no doubt on the advice of the Legal Department, who perhaps because they are lawyers, assume that every parent wishes for an apology or acceptance that something will not happen again, only in order that they can sue. This is perhaps more of a reflection on DET than parents.
236. An example of a complaint that will provide the Senate Committee with a typical example of how DET handle complaints follows.

Case Study 3

On 20 December 2012, the writer sent a letter to the Regional Director, DET Grampians Region in relation to "John" who was a young primary school child with Autism Spectrum Disorder.⁹⁰ The writer made a complaint about the repeated restraint and illegal imprisonment of this young boy.

The writer advised the Region that while attending Alfredton Primary School, John had been:

- *" held on the ground by ankles while other staff cross his arms, and then been dragged around the school*
- *secluded in a room for such periods that he has urinating and soiled himself, not eating food, becoming dehydrated "*

The writer advised that John's mother Mrs Smith, after transferring John to Wendouree Primary School, had advised them expressly not to subject her son to restraint and seclusion, which staff had ignored.

The writer reported that staff had subjected John to restraint and assault:

- *without gaining the consent of Mr and Mrs xxxxx;*

⁹⁰ letter Julie Phillips to Regional Director Mr Grant Rau

- *without documentation;*
- *without staff being trained in restraint, and therefore knowing which restraint holds are safe and which are dangerous;*
- *without having put in place other methods such as:
Drawing up a Behaviour Support Plan Based on a Functional Behaviour Assessment and Analysis;
Employing a behavioural psychologist or behaviouralist to develop, closely supervise, monitor and evaluate such a plan*

The Regional Director was advised that until he could guarantee the safety of John, given the psychological and physical injuries John was experiencing (John had begun to self harm), John would not be attending school.

The writer asked the Regional Director to respond "*immediately*".

On 31 January 2013, over one month later, the writer wrote to the Regional Director⁹¹ noting that John had the right to attend school as his nondisabled peers did, and asking for an urgent response to the letter dated 20th of December 2012.

On 4 February 2013, the writer wrote to the Regional Director⁹², the letter being reproduced below.

I refer to my letters to you dated 20 December 2012, 31 January 2013 also marked "URGENT".

Mrs xxxx is unable to sustain home schooling of xxxx. She is not registered for home schooling. xxxx needs to attend school, without being restrained, as soon as possible.

Please advise immediately.

On 6 February 2013, the writer wrote to the Regional Director⁹³, the letter being reproduced below.

I refer to my letters to dated 20 December 2012, 31 January 2013, 4 February 2013 also marked "URGENT".

Mrs xxxx is unable to sustain home schooling of xxxx. She is not registered for home schooling. xxxx needs to attend school, without being restrained, as soon as possible.

⁹¹ J Phillips to Mr Grant Rau, Regional Director DET 31 January 2013

⁹² J Phillips to Mr Grant Rau, Regional Director, DET 4 February 2013

⁹³ J Phillips to Mr Grant Rau, Regional Director, DDT 6 February 2013

Please advise immediately.

The Deputy Regional Director then sent the writer a one-page letter⁹⁴, which consisted of this sentence, among a few others.

"Following a review of the documented learning plans and procedures in place for xxxx at Wendouree Primary School and incident reports from 2012 relating to xxxx, I believe the school has responded appropriately and within DEECD policy guidelines to xxxx's identified needs."

The letter ended with an encouragement to return John to the very school that had been subjecting him to restraint and seclusion. John's name was misspelt throughout the letter.

Shocked at the brief response to the issues raised, including actions which can cause injury and death, the writer then sent the following letter to the Deputy Regional Director⁹⁵ on 7 February 2013.

Despite this four-page letter setting out numerous breaches of internal DET policy and procedure, not even a response was received.

After forwarding a complaint to then Minister for Education Dixon, who then gave Deputy Secretary Nicholas Pole the responsibility for following up the matter, the writer received a letter dated 12 March 2013.⁹⁶

This one-page letter addressed none of the individual complaints. Mr Pole's response to what had occurred in the past was summed up in this one sentence.

"I am informed that the Acting Deputy Regional Director reviewed the educational plans and procedures in place for xxxx at Wendouree Primary School, as well as incident reports from 2012, and has come to the view that the school responded that xxxx needs appropriately and accordance with DEECD guidelines."

237. And that was it. It is only by comparing Mr Pole's response to the letter that was sent to him that the full extent of his contempt for this process is revealed.

238. This example is typical of many other complaints I have assisted parents of children with disabilities to make using the internal complaints system at DET. The contempt with which DET treat such complaints reflects

⁹⁴ Letter Mr Peter Henry Deputy Regional Director to J Phillips 6 February 2013

⁹⁵ Attachment 17 Letter Julie Phillips to Mr Peter Henry, Deputy Regional Director 7 February 2013

⁹⁶ Letter Nicholas Pole to Julie Phillips 12 March 2013

their complete confidence that they are not required to actually address any detail of a complaint they receive.

239. The final insult to the child and his family was that when the Ombudsman investigated the investigation, it did not exist (see p 61). However clearly Deputy Secretary Nicholas Pole was not bothered by such detail when deciding to ignore allegations of the alleged abuse of a young boy with disabilities, (which the boy continues to have counselling about), and instead supported his regional office staff.

240. It is worth pausing to consider the seriousness of what is happening at senior levels of DET, including their Legal Department. Apart from the internal Legal Department advice to PASS (mentioned above in paragraph 18) in relation to seclusion constituting illegal imprisonment, the *Crimes Act 1958* supports such a view. A plaintiff need only prove that another person has unlawfully deprived them of their liberty, either intentionally or negligently, in any circumstances.

241. So here we have a complaint about something that could clearly constitute a criminal act, and Mr Pole, upon receiving the complaint, simply states that someone has "informed" him that the matter has been investigated. The question to be asked is, if a senior bureaucrat of DET is informed that there are possibly criminal acts occurring against students with disabilities and declines to investigate, does this constitute corruption?

242. Perhaps it is a more appropriate question for IBAC. On the other hand, perhaps it is a question for the Australian community.

Case Study 3A

On 19 March 2012, the parent of child with Severe Autism Spectrum Disorder wrote to Marnebek School Principal Karen Dauncey and amongst other things:

- expressed concern about a bruise found on her son's right arm she believed came from adult handling
- expressed concern about a bite mark found on her son's chest
- asked for a written response on how her son would be kept safe from injuries in the future.

She received no response.

On 27 March 2012, the same parent wrote to Ms Dauncey about an incident where she saw her son being manhandled by a staff member.

She received no response.

On 7 May 2012, the same parent wrote to Marnebek Principal Ms Dauncey and amongst other things, expressed concern that her son:

- was being locked in an outdoor garden for the entire duration of play time
- had been led around the school using a wrist strap 'like an

animal'

- was being physically restrained at assembly
- was refusing to go to school - screaming, crying and refusing to walk down the hall to his classroom
- was self harming by smacking his head into the floor
- was losing his academic skills

The parent said she was concerned that her son's safety, well-being and anxiety was spiralling out of control.

She advised she was withdrawing her son from the school.

She received no response in relation to any of her allegations of neglect and mistreatment.

243. The above is an example, not only of DET staff disinterest in reports of abuse and neglect of children with disabilities, but also of a complaints process where parents are treated with contempt.

Policies and Procedures

244. There are a number of policies, procedures and guidelines that are aimed at ensuring a high level of education and a safe environment for students with disabilities in particular.

245. At all times when the writer has assisted a parent to make a complaint that these policies/procedures/guidelines have not been followed, the formal response of DET is that these documents are not required to be adhered to. They are simply "guidelines".

246. This reinforces the inherent problem of the protection of children with disabilities in Victorian schools from violence, abuse and neglect. Not only do they have no legislative protection as adults with disabilities do (*Disability Act 2006, Mental Health Act*), but they are not even afforded the benefit of any internal DET protections. The Commission for Children and Young People will not cover children in schools.

247. This is no doubt why we have a "free for all" approach to children with disabilities in Victorian schools, where staff can subject them to all manner of acts, no matter how inhumane or degrading, and be supported to do so on every occasion.

Conclusions

248. DET, in its current form, presents a significant health and safety risk to students with disabilities.

249. The endorsement of violence, abuse and neglect against students with disabilities is endorsed at all levels of DET.
250. Violence, abuse and neglect in students with disabilities are covered up at all levels of DET.
251. The internal DET complaints procedure is unworkable, and there is no genuine interest in DET investigating complaints of abuse of children with disabilities in Victorian schools.

B. DEPARTMENT OF HEALTH AND HUMAN SERVICES

252. The Department of Health and Human Services ("DHHS") is an organisation that is dangerous as it is somewhat untouchable.
253. Its contribution to the relinquishment of children with disabilities is set out in the VEOHRC Report "*Desperate Measures*"⁹⁷.
254. Once a family is forced by DHHS by their lack of support to relinquish a family member with a disability into their care, despite the content of DHHS publicity material, they will lose all rights to decision-making for that family member (in the event the family member cannot make decisions independently).
255. As for government funded service providers, a further Case Study demonstrates their impunity.

Case Study 4

Mrs Smith was advised that while in the care of OnCall Personnel, her non-verbal son with severe Autism Spectrum Disorder who was required to have full-time supervision, was found with his pants off, and no one could explain how this could have happened, or who had removed them.

Mrs Smith requested an Incident Report from On-Call by e-mail on 30th of December 2014.

Mrs Smith requested to be told whether an internal incident report had been made, and if so for a copy to be sent to her, on 19 January 2015.

On 14 February 2015, the writer sent an e-mail to On-call asking for confirmation by 16th of February that On-Call were refusing to respond to the e-mail dated 19 January 2015.

On 10 March 2015, the writer wrote a letter to Ms Robyn Pollard, head of On-Call Personnel asking for an immediate response.

No response **over one year later.**

⁹⁷"*Desperate Measures - the relinquishment of children with disability into state care*" 2012 VEOHRC

A copy of the letter was sent to Minister Martin Foley, DHHS.
No response **over one year later.**

256. Was this neglect, or had abuse occurred? Certainly Mrs Smith and the writer will never know because OnCall Personnel refuse to even respond. What rights does Mrs Smith have? Complain to the office of the Disability Services Commission and have a mediation? What sanctions are applicable to On-Call, who refuse to respond to complaints? None.
257. Various reports throughout the last two decades have highlighted the vulnerability of DHHS clients to violence, abuse and neglect. Despite such reports, and even legislative change to the *Disability Act 2006*, nothing has changed.
258. DHHS are answerable to no one, and taking into account their incompetence in direct service provision, their power over those in their care is troubling and immense.
259. The Senate will no doubt receive many submissions on the abuse of people with disabilities in the care of DHHS and their contractors. In short, some of the contributing factors are:
- the lack of skill and qualifications held by workers;
 - the casualisation of the workforce;
 - the priority of DHHS to defend their staff over protecting people with a disability;
 - the failure by DHHS to appropriately assess staff before allowing them to work with the most vulnerable people with disability;
 - their contribution to ensuring that many people in their care literally have no communication method in order to report abuse;
 - the lack of free legal assistance available to families who wish to allege a breach of the *Disability Act 2006*;
 - a lack of interest at the most senior levels of DHHS to actively engage in the above issues.

Conclusion

260. DHHS and their contracted service providers present an occupational health and safety risk to clients with disabilities.
261. The power DHHS and their contracted service providers have over people with disabilities in their care constitutes a danger to those people.
262. Given the long-standing nature of issues of abuse against clients of DHHS and their contractors, it is unreasonable to expect that this situation will improve without significant and strong intervention.

C. DISABILITY SERVICES COMMISSIONER

263. The Office of the Disability Services Commissioner ("ODSC") could be seen to be doing more harm by its existence, than if it did not exist at all.

264. It is, essentially, a provider of mediation services, and an educator.

265. It holds the power to conduct investigations, but for some inexplicable reason, chooses not to. Recently in giving evidence to the Senate Inquiry, Commissioner Mr Laurie Harkin said:

*sustainable change was more likely to be achieved through education rather than punishment.*⁹⁸

266. There is no evidence put forward by Mr Harkin for this statement whatsoever. Mr Harkin's personal opinion is, with respect, irrelevant. Mediation is not always appropriate, and is particularly inappropriate when reporting abuse. However more importantly, the ODSC has no powers, DHHS and its contractors know that it has no powers, and therefore go through the motions knowing that they will not be required to do anything other than as they wish.

267. Putting aside other problems with the ODSC, such as length of time to progress complaints, and the conflict of interest in having an ex-DHHS staff member at its head, the fact that the authority has no powers to direct is sufficient in and of itself to re-assess its worth.

Case Study 5

On 6 October 2014, the writer made a complaint to ODSC in relation to a young man with Autism Spectrum Disorder, being a client of DHHS, on behalf of he and his parents. A second complaint was made on 19 November 2014.

While the complaints were before the ODSC, on 21 November 2014, "John" is taken to Northern Hospital due to DHHS contractors not having the skills or expertise to effectively deal with his challenging behaviours. John was subjected to chemical, physical and mechanical restraint – he was shackled to a hospital bed for three weeks and regularly sedated.*

DHHS made no move, despite being involved in ODSC led mediations, to put in place the supports required by John that were needed before he could leave the hospital. It was only due to a change.org petition and personal approaches by high-profile Australians directly to Premier Daniel Andrews that John was able to leave the hospital on 15 December 2014.

⁹⁸ <http://www.theage.com.au/victoria/no-disability-abuse-investigations-despite-lots-of-complaints-20150622-ghuprw.html>

The complaints to ODSC had no effect on what was a critically desperate situation, and ODSC was unable to gain any compliance or cooperation from DHHS - other than that they attended the mediation.

*No criticism of the hospital is intended.

D. OFFICE OF THE PUBLIC ADVOCATE

268. The Office of the Public Advocate ("OPA") has not been able to have a significant effect on the abuse of people with disabilities. It admits itself, that the reported cases of abuse are "*just the tip of the iceberg*".⁹⁹ One can infer, then, that OPA are unable to prevent this abuse occurring.

269. In addition, the relationship between OPA and DHHS through OPA's Guardianship Program is troubling. The writer's observation is that OPA Guardians work very closely with DHHS, at times to the detriment of people with disabilities. OPA guardians can make decisions for people with disabilities without meeting them, and in direct defiance of family wishes. It should not be inferred that the writer is suggesting that families will always be right, however when integral services to a person with a disability are reduced simply on the basis of an arbitrary cap in funding, and people are at risk, one would expect OPA Guardians to represent the person with a disability strongly, in line with the aims and objectives of OPA, and the aims and objectives of the *Disability Act*.

270. Out of the two families recently who were clients of the writer and had an OPA Guardian, one co-joined OPA to a complaint under the *Disability Discrimination Act* in 2011, and the other is about to do the same. This is very disturbing. It is the writer's opinion that OPA cannot be trusted to act in the best interests of people with disabilities through its Guardianship program.

271. However more importantly, the willingness of OPA to provide guardians for people with disabilities could be seen to be assisting DHHS to commonly make guardianship applications against parents, simply when the parents will not agree with something DHHS intends to do to their family member

Case Study 6

DHHS made a guardianship application in relation to "Jane" who has an intellectual disability and severe language disorder. The only reason for the application was that Jane's mother, Mrs Smith, would not give her permission for Jane to be placed in an inappropriate accommodation service. The track record of DHHS in relation to Jane had been one of incompetence, and

⁹⁹ Ombudsman's Report "Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 1" p4

inability to effectively manage challenging behaviours.

Mrs Smith has been asking for a Functional Behaviour Assessment for approximately one year.

VCAT helpfully supported DHHS, as is often the case, and a Guardian from OPA was appointed. Mrs Smith was not proven to be (or accused of being) anything other than a caring mother who was attempting to uphold the rights of her daughter. Despite not being able to find any significant fault with Mrs Smith, she was not given guardianship rights, and they were awarded to OPA.

272. This manipulation of families of people with disabilities should not be assisted by OPA, whose own Guardians once appointed often do not seem to have the time or the interest in ensuring that the rights of those people with disabilities are upheld from the writer's personal experience.

273. The reasons that OPA has had little effect on violence, abuse and neglect of people with disabilities are secondary to the fact of the matter itself.

Conclusion

274. OPA has not been able to prevent or address the abuse of people with disabilities in state care.

E. VICTORIA POLICE

275. Victoria Police and their failures in progressing complaints from people with disabilities have been set out by VEOHRC¹⁰⁰. There is not much to add to those conclusions apart from perhaps some case studies that support the findings of VEOHRC.

Case Study 7

Mrs Smith took her daughter "Jane", who had Autism Spectrum Disorder, to the local police station to report ongoing sexual assault by a family member. Jane was able to give evidence about what had occurred. The matter was not authorised to go ahead with the reasons given thus:

"I do not question the veracity of the information provided, nor the credibility of the witnesses. I base my assessment solely on the evidence provided and the likelihood of successful prosecution. I do not believe the prosecution of the accused would result in success as there is insufficient evidence with which to do so. I do not believe the burden of proof of 'beyond a reasonable doubt' would be met."

¹⁰⁰ "Beyond Doubt-the Experiences of People with Disabilities Reporting Crime" 2014

276. Despite Jane being able to give examples of the nature of the assaults and identify the abuser, it was viewed by Victoria Police that there would not be a successful prosecution. The question to ask, is that if a 10 year old girl without Autism Spectrum Disorder had reported such abuse, would Victoria Police have gone ahead?

277. To add insult to injury, a Freedom of Information request revealed that one of the members, an Acting Sergeant, as part of her brief seemed to have googled information on Autism Spectrum Disorder and sexualised behaviours and included some of those results in the Brief of Evidence. The Acting Sergeant concluded from her Google search:

That through research conducted of the complainants diagnosis of autism-the display of sexualised behaviours that [parent] produces is indicative of sexual abuse as disclosed by the complaint, I believe are within the scope of normality of the diagnosis- and not indicative of abuse¹⁰¹."

278. Children without disabilities no doubt would have had the benefit of having an actual psychologist give an informed opinion on these matters during a prosecution. Rather, we have a member of Victoria Police with no clear psychological qualifications making an unqualified decision that has contributed to an extremely serious matter, the sexual abuse of a child, not proceeding.

279. If it were not for the fact that the family member quickly left the state once finding out he was about to be interviewed over the abuse, Jane would be vulnerable to further abuse.

Case Study 8

Mrs Smith made a complaint about her son being subjected to illegal imprisonment at Marnebek School after not only seen such imprisonment first hand, but then as a result of a Freedom of Information request, finding documents that confirmed that her son was being subjected to restraint and was being put in the Marnebek "Timeout Room" 2-3 times a day, two out of every three days.

Mrs Smith complained to Cranbourne Victoria Police. They declined to proceed, but refused to advise Mrs Smith formally of why. Mrs Smith then wrote to the Cranbourne Victoria Police Station with a copy to the Chief Commissioner and Ms Kate Jenkins, Commissioner, Victorian Equal Opportunity and Human Rights Commission¹⁰². Mrs Smith asked two questions:

Please confirm that you have no intention of taking any action against staff at Marnebek School who have admitted to repeatedly locking up my son.

¹⁰¹ Brief of Evidence dated 26 April 2013

¹⁰² Letter from parents to Cranbourne Police Station dated 8 January 2015.

Please confirm that the Victoria Police position is, generally, that children with disabilities are able to be restrained and imprisoned, as long as this occurs in a school and teachers tell you that it is necessary.

Almost 6 months later, there has been no response from any staff member at Victoria Police, or from the Victorian Equal Opportunity and Human Rights Commission.

Conclusion

280. Victoria Police cannot be relied upon to progress complaints of abuse by people with disabilities.

F. OMBUDSMAN

281. The Victorian Ombudsman to date has not engendered confidence when dealing with complaints about the failures of other regulators to act on reports of abuse.

282. The writer refers to Case Study 3 above. This matter was the subject of a complaint to the Ombudsman.

283. The Ombudsman's Office said this, amongst other things, in a letter of response¹⁰³:

"The department confirmed that no formal investigation was undertaken into your complaint and allegations."

"In this matter the department consider both the school and the region were responsive to the complaint therefore, a formal investigation was not necessary or reasonable in the circumstances. Based on the information reviewed, I consider this to be a reasonable decision as regional efforts and resources were being directed to resolving the issues raised by the family and providing support for xxxx."

284. It is important to review some important information when considering the Ombudsman's response.

285. This was a complaint about restraint and illegal imprisonment, actions which had caused the family to leave two schools, and caused a child to become so traumatised he was self harming.

286. Yet no formal investigation was believed to be necessary, either by DET or the Ombudsman.

287. Numerous breaches of policies and procedures had been outlined, yet no formal investigation was believed to be necessary into those breaches.

¹⁰³ Director of Investigations, Ombudsman's Office to J Phillips, 30 December 2014

288. One has to wonder when DET believe a formal investigation might be necessary. Perhaps on the actual death of a student.

289. In terms of the region being "responsive to the complaints", one only has to read the Case Study to see the efforts that had to be made simply to get any response, setting aside that ultimately there was no meaningful response.

290. And yet the Ombudsman's Office believe the decision to have an "informal" investigation was "reasonable". And this begs the question as to when the Ombudsman's Office believes it is appropriate that a formal investigation take place.

291. A complaint was made to the Ombudsman's Office about these issues. Mrs Smith continues to wait for a response from the Ombudsman's Office, almost 7 months after contact.

Conclusion

292. The Ombudsman's Office cannot be relied upon to properly investigate complaints about the failure by regulators to respond to reports of abuse.

G. CHILD PROTECTION

293. Perhaps, again, an actual example of a report of abuse to Child Protection may provide the best indicator as to whether they can be relied upon to investigate the abuse of children with disabilities.

294. On 10 February 2014, the writer sent an e-mail to Child Protection in support of another parent who had contacted her about the abuse of students with disabilities at Marnebek school.

The writer's e-mail included allegations of:

- locking children in Courtyards;
- locking children and seclusion rooms;
- subjecting children to mechanical restraint;
- locking children in the sensory garden;
- emotional abuse through swearing and yelling;
- locking children in cage structures.

295. As of the date of this submission, approximately one and a half years later, the writer continues to wait for a response.

296. One of the writer's clients says this: "*I reported my concerns regarding my son's injuries to the Office of Child Protection who told me that they do not accept complaints from parents about teachers.*"

297. This is not the first time a client of the writer has provided information to Child Protection about the abuse of a child at school, including showing photographs of injuries sustained, and Child Protection have not acted.

Conclusion

298. Child Protection are unwilling to protect children with disabilities from nonsexual abuse in schools.

H. THE IMPACT OF VIOLENCE, ABUSE AND NEGLECT ON PEOPLE WITH DISABILITY, THEIR FAMILIES, ADVOCATES, SUPPORT PERSONS, CURRENT AND FORMER STAFF AND AUSTRALIAN SOCIETY AS A WHOLE;

299. *"Our family now resides in the USA where our son can finally access evidence based educational practice for autism and there are concrete regulatory and legislative protections which promote evidence based practice and meaningfully sanction against violence, neglect and abuse of people with disability. My son has improved significantly in the USA, he has acquired functional language, has acquired many academic, self care and life skills, has learned to bring his own behaviour under his own control and is now preparing for employment. I think a lot about what could have been possible for my son if these supports were provided to him years earlier. I deeply regret that we did not leave Australia sooner. I feel very distressed thinking about Australian children with disability who find themselves in abusive and neglectful situations at school. I feel sad that I was powerless to do anything. I think a lot about the professionals who could not have avoided also seeing what I saw and chose to work outside the ethical norms of their profession by doing nothing.*

300. *I would not recommend that anyone in Australia complain about disability discrimination or abuse at school. If you can, it is better to leave."*

301. This is not the only one of the writer's clients who has left Australia simply to access schools which provide evidence-based teaching and behavioural practices for children with Autism Spectrum Disorder. The financial and emotional cost of moving one's family to another country must be seen to be too great in the context of simply attempting to obtain a child's right to education, and to be free from abuse.

302. Most Australian families will not be in a position to move to another country. If they were, I too would suggest that they move overseas as this would be the safest environment for their child in terms of schooling.

303. Two mothers of students with disabilities who had spent years battling with DET and who were clients of the writer, attempted suicide due to the stress of their situation.

304. It is the writer's experience that the majority of the parents she works with have acquired a mental illness/psychological condition due to the stress of attempting to negotiate unsuccessfully with their child's school, and the trauma of knowing their child is being subjected to violence and not being able to prevent it.
305. A number of families that the writer has worked with have moved school more than once, and the violence simply follows the child, because it is endemic in the system and sanctioned at the senior levels of DET.
306. The underfunded disability advocacy sector struggles to keep up at the best of times with meeting the individual needs of people with disabilities seeking advocacy and support. The fact that a significant amount of time is spent advocating against government, who are the signatories to our international human rights conventions and who are charged with our most vulnerable, is unacceptable.
307. The impact of violence, abuse and neglect against children and adults with disabilities, on one hand, could be described as no less than violence, abuse and neglect against any member of the community. However it is worse. The trauma of being abused, for those who are unable to convey that abuse due to their disabilities, must be far worse than for those of us who have the ability to at least tell someone that the abuse is occurring.
308. Children with disabilities in schools, who by experiencing violent practices year after year become more traumatised and display more challenging behaviours as time goes on, will often transfer straight to DHHS Disability Care, when they very well could have been supported in the home and led independent lives in the community.
309. What is concerning about the prevalence of abuse in schools, in state care and in the receipt of service provision, is that it becomes normalised. Why is it that teachers, integration aides and DET psychologists and speech pathologists can see violence, but come to believe that it is a normal part of responding to people with disabilities?
310. Whatever the answer is, it may explain the lack of interest until recently, in the abuse of people with disabilities. It may explain why over decades reports of abuse have been tabled, read and put aside.
311. The question for everybody contributing to this review, or interested in it, is what is going to happen next.

RECOMMENDATIONS

The writer recognises that while this is a national inquiry, much of the abuse of people with disabilities takes place in a state-based service/government environment. It is unclear how the Commonwealth could require changes to be made, that need to be made, at a state level. However the Commonwealth do provide funding for services such as schools, and therefore have leverage in the provision of that funding for specific requirements in funding agreements. The writer has put forward recommendations without necessarily concerning herself as to how they would be enacted.

Recommendation 1

That a Royal Commission into violence, abuse, neglect and exploitation against people with disabilities be established.

Recommendation 2

That an independent national body be established, with the powers to direct and investigate, to hear complaints of violence, abuse, neglect and exploitation against people with disabilities in all institutional and residential settings, including schools.

Recommendation 3

That the Office of the Disability Services Commission in Victoria be dismantled.

Recommendation 4

That until an independent national body is established, people with disabilities are consulted as to which State body, if any, is capable of independently processing complaints, and has the sector's trust to do so. In the event that such a body exists but currently has insufficient powers, then the necessary legislative changes should be made immediately.

Recommendation 5

That there be any increase in the funding for Community Legal Centres throughout Australia who specialise in assisting people with disabilities.

Recommendation 6

That the necessary steps, legal or otherwise, be taken immediately to prohibit the seclusion of children with disabilities in schools in Victoria, and in any other state where it is not yet prohibited.

Recommendation 7

That the necessary steps, legal or otherwise, be taken immediately to regulate the restraint of children with disabilities in schools through an independent regulator that is informed by research and evidence-based best practice.

Recommendation 8

That Functional Behaviour Assessments and Positive Behaviour approaches are mandatory in all schools and accommodation facilities where challenging behaviours are a serious issue.

Recommendation 9

That a review of the Victorian DET Conduct and Ethics Department and Legal Department regarding their role in the covering up of abuse take place, including an examination of the monies spent responding to complaints by children with disabilities of violence, abuse and neglect.

Recommendation 10

That a review of the operations of the Victorian DET Freedom of Information Department regarding their role in the covering up of abuse take place.

Recommendation 11

The writer endorses Recommendations 1,2, 3, 4 and 8 of the submission by Communication Rights Australia and the Disability Discrimination Legal Service.

Recommendation 12

That Australian Departments of Education, given the substantial amount of taxpayers money they receive, be required to demonstrate through evidence that they are responding to the needs of children with disabilities with evidence-based practices.

Recommendation 13

That, given the deep dissatisfaction that people with disabilities, their advocates and families have with internal complaints procedures in schools, state care, and disability service provision that these procedures are not mandatory prior to approaching a statutory body to investigate their complaint now or in the future.

Recommendation 14

That an urgent review of each state's equivalent of the *Evidence Act* be undertaken with a view to improving the legal protections for people with a disability. The changes that have taken place in South Australia are a model at minimum.

Recommendation 15

Policies in all states cap the amount of time a child with a disability can spend on a bus going to school, to one hour one-way.

Recommendation 16

That Integration Aides are required to have a minimum level of qualification such as a Certificate in disability.

Attachments

- Attachment 1. Excel Spreadsheet Change.org
- Attachment 2A Courtyard Marnebek School
- Attachment 2B Courtyards Bulleen Heights School
- Attachment 3A Outdoor pen Southern Autistic School
- Attachment 3B Outdoor pen Bendigo Special Developmental School.
- Attachment 4. PASS Position Paper on Positive Management Strategies.
- Attachment 5. "Safe Room" Bendigo Special Developmental School
- Attachment 6. Behaviour Plan Bendigo Special Developmental School
- Attachment 7. Timeout Room, Wantirna Heights School
- Attachment 8. Map Marnebek School
- Attachment 9. Student Code of Conduct, Marnebek School
- Attachment 10. DET Restraint Policy
- Attachment 11. SSG minutes Wendouree Primary School
- Attachment 12. MAT Program Eastern Metropolitan Region
- Attachment 13. ANZUK Advertisements for Martial Arts Trained Aide.
- Attachment 14. Behaviour Plan Golden Square Primary School
- Attachment 14A Behaviour Plan Marnebek School 2010
- Attachment 14B Behaviour Plan Marnebek School 2011
- Attachment 14C Behaviour Plan Marnebek School 2011/2012
- Attachment 15 Letter to Minister Dixon from parents 6 January 2014
- Attachment 16 Letter from Nicholas Pole dated 4 February 2014
- Attachment 17 Letter Julie Phillips to Mr Peter Henry, Deputy Regional Director
7 February 2013

ABBREVIATIONS

DEECD	Department of Education and Early Childhood Development
DET	Department of Education and Training
IBAC	Independent Broad-based Anticorruption Commission
FBA	Functional Behaviour Assessment
MAT	Martial Arts Therapy
MSO	MAT Support Officer
ODSC	Office of the Disability Support Commissioner
OPA	Office of the Public Advocate
PASS	Principals Association of Special Schools
PECS	Picture Exchange Communication System
VEOHRC	Victorian Equal Opportunity and Human Rights Commission