



Government of South Australia

Office of the Guardian
for Children and Young People

Submission to the Legislative Council Inquiry
into Access to the Education System
for Students with Disabilities

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From: Guardian for Children and Young People
Level 4 east, 50 Grenfell St. Adelaide
www.gcyp.sa.gov.au

Ph. 8226 8570

Email: pam.simmons@gcyp.sa.gov.au

Further Information

For further information about this submission, please contact:

Pam Simmons, Guardian for Children and Young People
phone – 8226 8570, or at Pam.Simmons@gcyp.sa.gov.au

Alan Fairley, Senior Policy Officer
Office of the Guardian for Children and Young People
phone – 8226 8549, or at Alan.Fairley@gcyp.sa.gov.au

1. Introduction

1.1. The Guardian for Children and Young People advocates for the interests of children and young people under the guardianship or in the custody of the Minister for Education and Child Development.¹

1.2 This submission draws on the experience of the staff of the Office of the Guardian for Children and Young People (GCYP) in advocating for children and young people in care², monitoring their access to specialist and mainstream services, and talking with young people about their experiences and other experts and practitioners.

1.3 An above average proportion of children in care of pre-school or school age compared with their age peers are “*students with disabilities, additional learning needs and/or challenging behaviours*”³ (see Part 3 below for South Australian data).

1.4 This submission does not address separately the pre-school and school systems but refers generally to schooling.

We’re singled out as low income, trailer trash, holey clothes.

1.5 Our focus necessarily is the state school system. While the issues also are relevant to Catholic and Independent schools, there is no systemic data available about the work of non-government schools with children in care in South Australia. The *proportion* of all school-aged⁴ children in care attending government schools has declined steadily from 79.0 per cent in 2009 to 55.8 per cent in 2014, a steeper decline than that of children who are not in care.

I got picked on as I was the different one.

¹ Through an agreement between Ministers, the Guardian also monitors the circumstances of children and young people held in custody in the Adelaide Youth Training Centre.

² For the purposes of this submission the terms “in state care” or “in care” refer to those children and young people under guardianship, or in the custody, of the Minister for Education and Child Development, and those detained in the Adelaide Youth Training Centre.

³ Terms of Reference - Access to the Education System for Students with Disabilities Inquiry.

⁴ School-aged is 5 to 17 years.

1.6 The views of children and young people in care quoted in this submission come from a number of sources, including consultation undertaken over the past twelve months. Unless attributed otherwise, all quotes are those of young people in care in South Australia.

1.7 Access to and the opportunity for success within education for children in care with disabilities is a right enshrined in international agreements to which Australia is a signatory. *Attachment 1* to this submission discusses implications of the *Convention on the Rights of the Child* (CRC) and the *Convention on the Rights of Persons with Disabilities* (CPRD) and explores aspects of the *Disability Standards for Education 2005*.

1.8 The Productivity Commission *Report On Government Services 2015* presents disability as “a complex phenomenon, reflecting an interaction between features of a person’s body and features of the society in which he or she lives”.⁵ Children in care experience a more complex interplay of such personal and environmental factors because of their complicated guardianship arrangements. The Commission devotes some attention to the interaction between education and the experiences of children and young people in care and identifies improved education as an indicator of governments’ objective of maximising children’s life chances “by ensuring children in care have their educational needs met”.

*In important ways, children in care are the same as other children – they have ability, strength, ‘regular’ insecurities and they want to be treated the same. However, they do face more obstacles: issues about the state being their parent, who is their best advocate and who has the responsibility for coordinating their educational and health needs. Children and young people in care tend to have more professionals in their lives than friends.*⁶

⁵ Productivity Commission; *Report On Government Services 2015*, Chapter 14,

⁶ Bann S, 2014, excerpt from an unpublished presentation to a Kids Matter forum. Sara is a former Youth Advisor to the Guardian.

Key messages

The gap in educational achievement and outcomes between children with disabilities in care and their age peers can be addressed by, among other things -

- Early specialist intervention for children with speech and language disabilities.
- Strengthening capacity to build culturally supportive connections between Aboriginal and Torres Strait Islander students in care, local Indigenous communities and schools.
- Addressing the problem of lowered expectations of achievement for students with disabilities and/or in state care by providing information and challenging pessimistic views of educators, social workers and carers about capacity and capability.
- Enhancing participation and engagement of students in care by, among other things, adopting alternative disciplinary measures in place of suspension and exclusion.
- Monitoring and reporting on part-time attendance of students, with the aim of gradually increasing the hours of school attendance and participation.
- Providing information and skills development for school staff in understanding and responding to children with learning disabilities resulting from early childhood trauma.
- Agreement on a definition for learning disabilities that applies consistently across programs and across non-government and government schools.
- Evaluation of the Flexible Learning Options (FLO) program to understand better its engagement with, and outcomes for, students in care who have, or are likely to, disengage with school.
- Reviewing the impact of Individual Education Plans, expanding their use to non-government schools and enhancing the quality of their implementation.
- Analysing the use of School Services Officers and allied health professionals in schools to better support individual students with learning difficulties.
- Improving knowledge of year 12 completion rates and post-school activity so that we understand better the pathways from school.

Youth justice detention

We deal only briefly with the circumstances and needs of children and young people in youth justice detention, although many of the issues discussed also apply to them.

In the period 1 July 2014 to 30 June 2015, there were 827 admissions to youth justice facilities in South Australia involving 426 individual young people. Forty-five per cent were Aboriginal and Torres Strait Islander, 16 per cent were subject to guardianship orders, and 23 per cent were female.⁷

GCYP monitors the circumstances of young people while they are detained. The following education issues have been identified in the visits to the detention centre and in conversations with the residents.

- Residents who are secluded from other residents for behaviour management are often excluded from attending school and are rarely provided with alternative lesson plans. The separation periods are often three days and sometimes consecutive separations are imposed.
- Disabilities are often unidentified or, where they are, evidently are rarely considered in responses to challenging behaviours.
- The transition from school in the training centre to school in the community is hampered by reported reluctance of schools to accept students released from detention and inadequate information exchange on release.
- Young people who are detained have often missed a great deal of school and young people's views of their own capability exceeds that of the training centre education staff, resulting in frustration for residents.
- Access to, and completion of, certificate-level training is constrained by facilities, intermittent absences and few opportunities for work-site experience.

⁷ Data provided to GCYP by the Department for Communities and Social Inclusion, Youth Justice.

2. The views of children and young people in care

2.1 Children and young people in care are not a homogeneous group. They have different abilities, dreams and circumstances. However, they do share a history of loss and trauma. They have to negotiate and seek out the things that most children take for granted, such as a sense of belonging within new families, different rules, written plans about them, privacy, seeing brothers and sisters, keeping personal things safe and new schools.

Children and young people in care are achievers. Most overcome disadvantage to be strong and sure. They need our help to be the best they can.

It's not just having no parents – that's just the start of it. We have to deal with the government and social workers and lots of other people and bullying.

2.2 When consulted, children and young people in care commonly express their appreciation of going to school such as this statement from the Welsh *Looked After Children's Education Charter*.⁸

We as fostered young people want the same things in life as other children: success at school, a good job, and a happy family. However, many of us face great upheaval and disruption in our lives. We can experience several moves during a year, resulting in a change of foster carers, school and friends. Many of us still go on to realise our potential and ... our achievements should be noted and celebrated.

According to children, the **benefits of going to school go well beyond their school grades.** Children in care say they like school because they make and mix with friends, learn new things, there is stability in the same places and faces and they are doing the same as everyone else their age. School is a site that should contribute positively to their social and emotional wellbeing.

Adults have similar views about the benefits of school but they tend to be more future-oriented such as learning how to acquire and apply knowledge and as a foundation for job and life success.

⁸Auditor General for Wales 2012, page 9

My old teacher really helped me ... used to stand up for me. Listened when I said I couldn't do some things.

2.3 Work undertaken in 2007 by Julie White and Helen Lindstrom for the Guardian about how to improve educational outcomes for children and young people in care identified a number of strategies to address disadvantage in school for students in care and included a chapter on what young people in care say about school.⁹

Seriously the most hardest thing is asking for help.

I do like it [school], but don't like it. Feel caught because I want a good education but don't know how to get one.

The conclusions from this 2007 inquiry point to the significance of people working together on school and home circumstances, not giving up on children when they challenge, treating them with respect and responding to each child's strengths and needs.

If they don't give up on you – you don't give up on you

2.4 Children in care often live fraught lives that may trigger or exacerbate other health, disability and social problems. In March 2015, the Queensland Department of Education and Training released a succinct overview of the possible impacts of abuse and neglect on children.¹⁰ The impacts indicate the potential severity and multiplicity of issues faced by children in care, especially if they also have a disability. The paper then identifies **potential impacts of abuse and trauma on educational achievement** and overall participation in the school environment.

⁹ White J and Lindstrom H 2007a

¹⁰ Department of Education and Training (Queensland) 2015, page 1. Identified impacts included: insecure or disorganised attachment disorders; medical conditions (including failure to thrive, hearing loss and brain damage); cognitive impairments; mental health issues (including post-traumatic stress disorder, depression, anxiety disorders, suicidal behaviour and eating disorders); alcohol and substance misuse; behavioural problems (including aggression, disruptive behaviours, inappropriate sexualised behaviour and hyperactivity); criminal activity; and a range of social issues(including multiple placement changes while in care and social mobility, isolation, homelessness, poverty and unemployment in adult life).

I had a good year level coordinator who understood and didn't delve unless she had to. Others don't understand and want to know too much.

2.5 In a 2013 report from the CREATE Foundation young people **talked about the disruption caused by having to move schools due to placement change.**¹¹ Two thirds of respondents though said they enjoyed their school experience.¹² The interruption to learning is significant at each change of school, as is the breaking and re-forming of friendships and relationships with trusted adults. For many children in care there is the added embarrassment of more people knowing their circumstances.

It's easier to be thought of as trouble rather than stupid.

2.6 **Instability in school and home adversely affects the level of engagement** a child has with school, and consequently with learning. Consultation with young people in 2007 by White and Lindstrom for the Department for Families and Communities focused on those who were disengaged or disengaging from school (four of whom were Aboriginal). The authors observed that "[t]here is a strong possibility that if these young people were not engaged in ... alternative learning pathways, they would not be attending any form of school or training"¹³. The authors were of the view "that most teachers and schools did not want them there and it seems that due to the high mobility of most of these young people they rarely feel part of a 'school community' and struggle with the very different boundaries around behaviour and rules that are applied at each school".¹⁴

On being supported by SSO's (or tutors) at school -

My grades have improved over the last year and a half. These programs are very necessary. They help stop children and young people in care from feeling hopeless.

¹¹ McDowall, J. J 2013, page xx1

¹² Ibid page xx1 (but noting from page 93 - "it was encouraging that two thirds of respondents rated their overall school experience as at least quite good").

¹³ White J and Lindstrom H 2007b, page 11

¹⁴ Ibid page 4

2.7 Problems with school are **exacerbated when a disability hinders understanding** between the child and teacher or carer.

“Looked after disabled children remain a hidden group and speak about their experiences of not being heard. There is concern that presumptions are often made about the competency of children who use a range of communication strategies to express their views and they can often be overlooked.”¹⁵

Recent consultation undertaken by the Council for the Care of Children provides helpful examples of the perceptions of young children with disabilities within the education system.¹⁶

When my carer writes a note they sign it carer and then everyone knows.

2.8 Young people who have left care, having achieved well at school, say that **small things made a big difference**. Among other things, positive encouragement, a good relationship with their social worker, high expectations about attendance, support from their teachers and a special relationship with a mentor or role model really helped. Birth parents’ interest and belief in education, despite in some cases the absence of parents, also made a difference.

They said they didn’t know the answer but bring it into the office and they did it with me.

2.9 Responsiveness to the views and opinions of children and young people underpins good practice, a factor recognised recently in Britain’s comprehensive special educational needs and disability code of practice, which says that “[l]ocal authorities must ensure that children, their parents and young people are involved in discussions and decisions about their individual support and about local provision”.¹⁷

¹⁵ Together - Scottish Alliance for Children’s Rights 2014, page 51

¹⁶ Council for the Care of Children 2015, Part 3 *Hearing from children and young people* and Part 5 *Education*.

¹⁷ Department of Education and Department of Health 2015, page 20

CASE STUDY 1: Sara - in her own words

The mental health needs of children and young people are of particular importance. The prevalence of problems is significantly higher for children in care. We see behavioural difficulties and challenges displayed more than children withdrawing and isolating themselves. For children and young people experiencing such challenges, school looks so different.

So, an example of this, is while I was attending the first years of school I was living in foster care. I first went into foster care at the age of 2, and left foster care when I was 18, so throughout my whole schooling I was living under guardianship of the Minister, and while some teachers at school knew I was in foster care, I don't think that they truly had an in depth understanding of what that meant for me. Well, I will let you know. For the 13 years I was at school, I had around about 80 different people looking after me. That includes Foster Carers and Youth Workers. That doesn't include the Social workers, Mentors, Managers, Psychiatrists or Counsellors, that were also a part of my life.

I actually had an estimated 90 different carers from the time I entered care, until the time I left, but we'll say that for the 13 years that I was in school I had around 80. While going to school, I moved placements at least once, for every year that I was participating in classes.

I moved from Emergency Foster Care, to being adopted, to my adoption falling through, to moving into a long term placement, to that placement falling through, to living in a charity to living in Youth Homes.

For me, school was not a priority. For me school was my escape goat, and for majority of my life, it was the only thing that was familiar to me and safe. Sometimes I used to come to school, and have no idea who was looking after me when I was going home. I feel like I missed a lot of my school years, I don't feel as though I concentrated at all in the time that I went there. And it's been really hard for me to be able to pick those learning habits up now, even as an adult.

Every child has the right to a good education. It is best achieved by ensuring that children and young people have access to learning environments that promote their wellbeing – physical, emotional and social.

To promote a positive mental health for children and young people, and contribute to the overall wellbeing, we need to focus on the child as an individual and demonstrate our commitment to promoting their rights.

Excerpts from a presentation to a Kids Matter state conference, 28 May 2010, by Sara Bann, Youth Advisor to the Guardian for Children and Young People.

3. Characteristics of school children in care who have disabilities

3.1 We do not know the exact number of school children and young people in care who also have a disability, especially if psychological health is involved. Disability Services information provided to the GCYP in previous years suggests that between 10 and 12 per cent receive disability services outside of the school environment. Within the state school system, **the proportion with a disability recognised by the education system rises to over 30 per cent.**¹⁸

Child Family Community Australia noted in March this year that “more than one-third of carers reported that children had a health issue or disability” and that “emotional or behavioural problems were reported by over one-third of carers”.¹⁹

3.2 A 2012 CREATE Foundation report refers to research that suggests that **as many as 75 per cent of children and young people with high levels of placement instability may experience psychiatric disability.**²⁰ Given that the number of children in care in Australia is growing, and that “[i]ncreasingly, children and young people with high and complex needs are entering or are in the care system”, CREATE observed that “those with high support needs, extreme and complex challenging behaviour and/or impairments giving rise to significant disabilities are receiving inadequate levels of support”.²¹

Similarly, a 2004 Scottish study indicated that 72 per cent of young people in residential care have a mental health issue (with 60 per cent classified as ‘conduct disordered’ and 18 per cent with an emotional disorder).²²

3.3 The characteristics of South Australian children in care with disabilities recognised by the education system in government schools were described in a report released by GCYP in March this year with the assistance of the Department for Education and Child Development (DECD).²³ It shows that **the proportion of**

¹⁸ Definition from Department for Education and Child Development; *Policy - Children and Students with Disability* (page 9)

¹⁹ Kiraly M 2015

²⁰ CREATE Foundation 2012, page 7

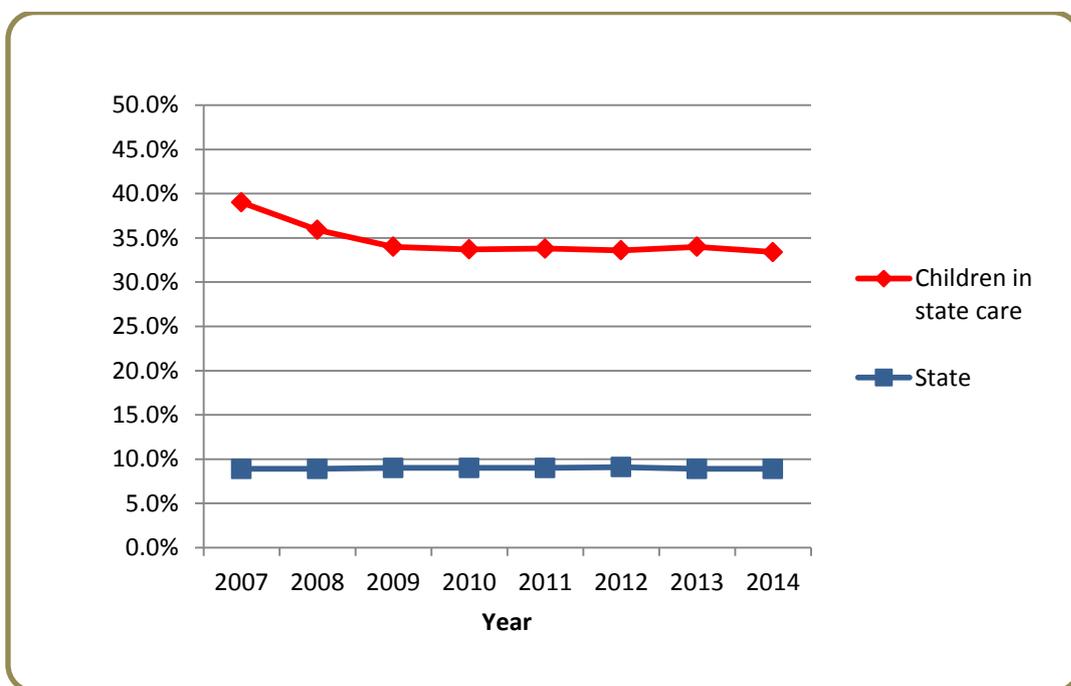
²¹ Ibid page 6

²² Meltzer et al; quoted in see McLean S, Price-Robertson R and Robinson E 2011, page 13

²³ GCYP 2015a - this is provided as Attachment 2.

children in care with an identified disability is significantly higher than the state average.

Diagram 1: Children with a disability, children in care compared with state school population as a percentage, 2007-2014



3.4 Diagram 1 shows that the percentage of children in care in government schools with a disability dropped steadily from 39 to 33.7 per cent from 2007 to 2010. Since then the percentage has remained almost constant.²⁴

3.5 Diagram 2 below identifies primary disability categories in South Australian government schools. While the numbers are too small in most categories to compare children in care with state totals, **we draw attention to categories in which children in care feature: language and communication²⁵, intellectual disability, and speech and/or language.** This is instructive, showing, for example,

²⁴ Note: DECD's Disability Support Program only applies to designated disabilities (Autistic Disorder and Asperger's Disorder; Global developmental delay; Intellectual disability; Physical disability; Sensory disability (hearing); Sensory disability (vision) and Speech and/or language disability).

²⁵ In 2007 the disability categories were revised and 'Language and Communication' was replaced with 'Autistic/Asperger's Disorder', 'Global Development Delay', and 'Speech and/or Language'.

that the proportion of children in care in government schools with an intellectual disability was nearly eight times the state average in 2014.

Diagram 2: Category of primary disability, children in care compared with school population, 2014

Primary Disability	Children in Care		State %
	Number	% of Children in Care	
	2014	2014	2014
Language and Communication	68	4.7	1.8
Intellectual Disability	164	11.4	1.5
Speech and/or Language	126	8.7	2.6
Global Developmental Delay	44	3.1	0.4
Autistic / Asperger's Disorder	51	3.5	1.9
Physical Disability	12	0.8	0.3
Sensory Disability (Hearing)	14	1.0	0.4
Sensory Disability (Vision)	3	0.2	0.1
TOTAL	482	33.4	9.0

3.6 The March 2015 GCYP report documents trends in attendance, literacy and numeracy, and school suspension (among other things), and found that -

- a greater proportion of students who are children in care have learning disabilities, notably in speech and language skills

- a higher proportion of this group is suspended from school
- nearly two thirds of suspensions in this group were for children aged up to 12 years
- the absence rate of this group is only slightly higher than the school population as a whole²⁶
- one in six students under guardianship is exempted from sitting the NAPLAN tests
- there is a persistent significant gap between this group and their peers in achieving sufficient progress in literacy and numeracy
- children with disabilities who are in care have better school attendance than their peers with disabilities who are not in care.

The report concludes that more attention should be given to -

- speech and language delays of children in care before and on entering school
- alternative disciplinary measures to suspension from school – particularly for younger children
- monitoring hours of attendance so that part-day absences are minimised
- investigation of the reasons for the high rates of exemption from NAPLAN tests, and
- narrowing the gap between students in care and their age peers in literacy and numeracy abilities.

If you dress nicely, people don't believe you're in foster care. They expect you to be one type of person, not well presented or well adjusted ... expect you to be stuffed

3.7 We can accept the spirit of the World Health Organisation's (WHO) socially constructed definition of disability as "an umbrella term for impairments, activity limitations, and participation restrictions. Disability refers to the negative aspects of the interaction between individuals with a health condition ... and personal and environmental factors²⁷.

Children in care experience a particularly complex interplay of such personal and environmental factors.

²⁶ This does not account for students who are absent for part of the day.

²⁷ World Health Organisation 2011, page 7

CASE STUDY 2: 'Siobhan'

The foster carer of 'Siobhan', 8, rang the Office of the Guardian seeking assistance to resolve issues with Siobhan's school that had resulted in reduced attendance. The carer reported that Siobhan attended a mainstream public primary school and had a borderline intellectual disability and poor muscle tone.

The carer said that Siobhan's behaviours had become increasingly challenging following a move to the Special Options class, and she had been excluded recently for hitting the physical education teacher. The school required that she demonstrate control of her anger and participate in physical education.

GCYP sought additional information from Families SA and the school. The relationships between the adults were strained. Two meetings were held at the school to clarify Siobhan's abilities and challenges. GCYP suggested that a medical opinion be sought on her ability to participate in physical education and Families SA undertook further assessment which confirmed her to have an autism spectrum disorder. A psychologist and an occupational therapist joined the team to work with Siobhan and the school.

Siobhan progressed well and learnt how to express her emotions safely. The deputy principal had oversight of Siobhan's education planning and engagement and Siobhan increased her hours of attendance.

4. Aboriginal and Torres Strait Islander children and young people in care

4.1 In 2013-14, Aboriginal and Torres Strait Islander children and young people were seven times more likely than non-Aboriginal children to access child protection services (136.6 per 1,000 children compared to 19 per 1,000 respectively).^{28 29} In South Australia, of 2,786 children on care and protection orders in June 2014, 812 were Aboriginal or Torres Strait Islander (29.15 per cent).³⁰

4.2 Support for this over-represented group of young people should be culturally sensitive³¹ and respond to broader national strategies, including the Commonwealth *Indigenous Advancement Strategy*, (which names 'Children and Schooling' as one of five overarching programs)³², as well as COAG's 'Closing the Gap' framework (2014)³³ and reporting on Indigenous reform (COAG Reform Council 2014).³⁴

4.3 Young Aboriginal people in care often stress the **importance of culture and identity and its relevance to education** and their schooling experience.

In NAIDOC Week we make anything to do with Aboriginal stuff, like a boomerang, or we do an Aboriginal flag and we go down the street and we show it off to anybody. The whole school does it.

²⁸ The terms Indigenous, Aboriginal, and Aboriginal and Torres Strait Islander (ATSI) are used interchangeably throughout the document to be inclusive of Aboriginal and Torres Strait Islander peoples.

²⁹ Australian Institute of Health and Welfare 2015

³⁰ GCYP 2015b, viewed 17 September 2015,

³¹ DCSI 2015, page 8, notes that, due to over-representation of Aboriginal children and young people, it is important "to recognise that this is a result of the effects of colonisation, inter-generational trauma and compounded grief and loss experiences".

³² The other four, also of relevance to ATSI children in care, are: Jobs, Land and Economy; Safety and Wellbeing; Culture and Capability, and Remote Australia Strategies, viewed 17 September 2015, <http://www.indigenous.gov.au/indigenous-advancement-strategy>

³³ Karmel T, Misko J, Blomberg D, Bednarz A and Atkinson G 2014, February 2014

³⁴ Manning M, Ambrey C.L, and Fleming C.M 2015, page 1. This notes success with some targets (reducing child deaths, improving literacy and numeracy, and Year 12 attainment), while noting that outcomes in other areas (life expectancy and early childhood education) have fallen short and, in some cases (employment outcomes), deteriorated.

Every assembly, they get one of the kids ... Aboriginal or non-Aboriginal, to say things like the reconciliation stuff ... acknowledging Aboriginal people and all that.

*I think they have a right to know where they come from, their cultural identity. Talk to the school; bring in plans to strengthen their knowledge about who they are as a person and as an Aboriginal as well; know where they come from.*³⁵

4.4 Placement in accordance with the *Aboriginal Child Placement Principle* (ACCP)^{36 37} is fundamental to the care system for young people from Indigenous backgrounds. In practice, in June 2014, only 67.2 per cent of Aboriginal children in care in South Australia could be placed in accordance with the ACCP.³⁸ This makes **cultural development planning even more important** so that connections with community and country are deliberate, including the integration of cultural linkages with schooling.

If you have a different skin colour you might get bullied if you don't know about your culture.

Our school ... doesn't do anything for Aboriginal children.

We had to move into a private school ... we had to get used to hanging out with non-Aboriginal people ... 'cause in the whole school there's only four Aboriginals.

4.5 Young Aboriginal people are **subject to the general disadvantages confronting Indigenous communities**.³⁹ Helme and Lamb (2011) contextualise their discussion of the factors influencing Indigenous student school completion rates in this context when they explore "access, attendance and achievement",

³⁵ Extracts from the interview with this young person and some other Aboriginal students quoted in this paper can be viewed at <https://www.youtube.com/watch?v=QLqPaKGXcxo>

³⁶ See Box 15.15 in Chapter 15 of the Productivity Commission; *Report On Government Services 2015*,

³⁷ A new overview of the operation of the ACCP is available in Arney Y, Iannos M, Chong A, McDougall S and Parkinson S 2015

³⁸ GCYP 2014b

³⁹ See new Western Australian discussion (page 25) - Commissioner for Children and Young People 2015. A powerful contextual discussion also can be found in Kelly K, Dudgeon P, Gee G & Glaskin B 2009 (discussion of 'risk factors' e.g pages 11 and 14)

and discuss barriers to access to school⁴⁰ and secondary school strategies that have been effective in increasing engagement, achievement and school completion.⁴¹ They also discuss what does not work.⁴²

At our school, everybody in the second wing knows some of our lingo 'cause I've taught everybody ... I feel really good because I don't get left out or looked at in a weird way when I talk my language. It makes me happy because everybody else joins in with me, and students are very respectful and they love Aboriginal people.

4.6 School completion rates for Indigenous students are very low compared with almost every other demographic group in Australia, and more than 30 percentage points below the rates for non-Indigenous students (Long 2009).⁴³ School completion rates for young people in care are similarly well below the rates for their age peers. However, in South Australia at least, **school attendance rates are slightly higher for Aboriginal children who are in care**, compared with Aboriginal children as a whole.⁴⁴

4.7 Interviews with Aboriginal young people in care conducted by the Office of the Guardian in 2015 identified the importance of school related activities such as those provided by the South Australian Sports Training Academy. In addition to being an avenue for participation and excellence in sport, such programs provide **opportunities to meet other young Indigenous students**.⁴⁵

Understand your culture and how they act ...so you understand [your family] and respect how they act.

You need to know so you can figure stuff out [about who you are].

⁴⁰ Helme S and Lamb S 2011

⁴¹ Ibid page 4 . Three main areas are identified: a school culture and leadership that acknowledges and supports Indigenous students and families; school-wide strategies that work to maintain student engagement and improve learning outcomes; and student-focused strategies that directly meet the needs of students at risk of low achievement or early leaving.

⁴² Ibid page 2

⁴³ Ibid (page 4)

⁴⁴ GCYP 2015a, page7

⁴⁵ Available at <https://www.youtube.com/watch?v=QLqPaKGXcxo>

5. Discussion

5.1 This section highlights six factors that influence access to and success within education for children and young people in care who have disabilities.

- School as a normalising social opportunity
- Support at school
- Support at home
- Nurturing aspiration
- Cultural appropriateness
- Resources

Everybody wants to belong.

SCHOOL AS A NORMALISING SOCIAL OPPORTUNITY

5.2 Exclusion from mainstream social and institutional opportunities is a feature of the lives of many children and young people with disabilities as it is, to some extent, with children in care. The Council for the Care of Children (CCC) reported recently that “[f]amilies said as their children grew and differences between them and their peers without disability became more obvious, their child(ren)’s exclusion from social and recreational events increased”.⁴⁶

The worst thing is having no friends.

It’s not just having no parents – that’s just the start of it. We have to deal with the government and social workers and lots of other people and bullying.

The CCC Report also said that although **many parents initially were committed to mainstream education** and that the first year or so had gone reasonably well, this changed over time because “as their children matured, and their peers without disability surpassed them academically and socially, their differences became more noticeable.”⁴⁷

⁴⁶ Council for the Care of Children 2014 (page 22). Council for the Care of Children 2015 (Part 5) provides a helpful account of issues faced by disabled young people at school.

⁴⁷ Ibid page 25

5.3 The complex personal circumstances of these children and young people can intensify problems with forming strong social networks and succeeding at mainstream schools. Amelioration of such problems must respond to the specific needs of each child, but **the education system as a whole can influence the success or otherwise of individual planning.**⁴⁸

5.4 Young people interviewed for the Guardian's 2007 inquiry overwhelmingly expressed the desire to appear and be treated like other children in school. Several acutely recalled incidents in which a passing comment or a minor action had aggravated their feelings of difference, laid them open to negative reactions from their peers and deprived them of benefits that others enjoyed.⁴⁹

Strategies suggested to assist staff to be sensitive to the circumstances of students in care were for -

- an information package to be made available to teachers and other school staff to help them understand what being in care means. It would include general information about children in care, their circumstances as a group, the need for confidentiality and sensitivity, and a DVD of students in care talking about how it feels and what they want
- school staff development sessions devoted to understanding their role in avoiding the stigmatisation of and accidental discrimination against children in care within the school, and
- involvement in extra-curricular groups and activities to help build social networks, neutralise negative stereotypes and build success for children in care.

Learning is better now. It's more fun. The tutor helps me.

⁴⁸ For the need for support programs to engage with schools see McLean S et al 2011, op cit - "... the program should have active strategies for engaging with or developing the young person's educational, training and/or work experience network, because academic success and support are related to positive outcomes". (page10)

⁴⁹ White J and Lindstrom H 2007a, op cit (p 76)

SUPPORT AT SCHOOL

Improved Support for Schools and Teachers

5.5 Teachers who work with children and young people with special learning needs require **appropriate training and support**.⁵⁰

5.6 Guidance and counselling services in schools must be sensitive to and support children in care. The CREATE Foundation refers to the Australian Education Union's suggestion that an appropriate counsellor to student ratio is 1:918 in government schools. Not having sufficient specialist support of this sort may, CREATE suggests, "have a significant impact on academic outcomes for children and young people with a disability in care".⁵¹

My teacher never gave up on me. I told him I was in care and he said – do it [homework] over lunch and bring it to me at the end of the day. If they don't give up on you, you don't give up on you.

Individual Education Plans

5.7 State Government policy stipulates that students under guardianship in state schools have a personalised Individual Education Plan (IEP). An IEP should be comprehensive. Children in care with a disability also may have a Negotiated Education Plan (NEP)⁵² that addresses additional needs and corresponds with or accommodates the IEP. In any case, plans should enable effective 'engagement' between schools and carers, and others in young people's lives, to support the development of a broad set of social skills in addition to what is in the curriculum.⁵³ **Measures to enhance the IEP process should be supported.**

The **proportion of students in care who have an IEP is under 50 percent**. Only 56 per cent of school-aged children attend state schools and, at best, 74 per cent of

⁵⁰ Noting the practical matters raised by the Australian Education Union (AEU) in its submission to the 2015 *Review of the Disability Standards for Education 2005* i.e that the purposes of the standards are unlikely to be achieved unless "adequate resourcing ... is provided to schools and improved training and professional development to teachers", page 2

⁵¹ CREATE Foundation 2012, op cit, page 28

⁵² Department for Education and Child Development 2012, *Adjustments To Support Student Learning And Achievement*, Disability Support Program, March 2012, viewed 17 September 2015

⁵³ The kind of holistic philosophy that underpins initiatives such as the 'Team Around the Child' model, viewed 17 September 2015, http://www.decd.sa.gov.au/speced/files/links/teamaroundthechildguide_ma.pdf

these students had a current IEP when the Office of the Guardian audited the cases of those children under long-term court orders.⁵⁴

The IEP helps us meet kids' needs. It helps us plan educational goals for them and build on their strengths. Because the staff are informed about the learning goals we can all be supportive.

(School Principal)

Early Intervention

5.8 The often disrupted lives of children and young people in care can exacerbate learning problems, especially if they have even moderate disabilities. A common result is that they fall behind. Young people who disengage from school need early intervention. Consultation with young people about when they started finding school or learning difficult demonstrated their appreciation of “the crucial importance of early learning and early identification of support needs for literacy and numeracy skills”.⁵⁵

I've been picked on for years about being a foster child, since Reception. This year I finally stood up to it

5.9 A considerable number (13.4 per cent) of children under guardianship in State schools have a **primary disability involving speech and/or language**. Many of those whose primary disabilities are global developmental delays, intellectual disability, autism spectrum disorder and hearing disabilities also are likely to have communication difficulties. Neglect of speech and language difficulties is likely to be one explanation for the big decline in writing ability by year 9 to the point where nearly two-thirds of children tested do not meet the threshold to make sufficient progress at school. The difference between children in care and the state as a whole is not so remarkable in year 3, but gets progressively worse. Early intervention, especially in language, is essential.

Suspension is the biggest thing. Our kids are constantly getting suspended. Then they get sent home. They may not have a family. Or the family is under so much pressure that it may break up.

(disability worker)

⁵⁴ GCYP Audit of Annual Reviews 2014/15 (upcoming). Note: the IEP completion rate over the past 5 years has been 78 per cent.

⁵⁵ White J and Lindstrom H 2007b, op cit, (page 5)

Discipline

5.10 Classroom and student management practices need to respond sensitively to the needs of students with disabilities, particularly those who present with challenging behaviours.⁵⁶ **Schools and teachers should be equipped with the capacity to do this without having to rely on reactive practices such as exclusions⁵⁷ or suspensions.** A UnitingCare submission to the current Senate Inquiry into access and attainment for students with disability in the school system noted that –

*These students often experience a repeated pattern of school suspension, which intensifies academic difficulties and disengagement from school. Teachers need to be equipped with more effective strategies for managing challenging behaviour and suspension should only be used as a rare and last resort.*⁵⁸

SUPPORT AT HOME

The early years

5.11 An Australian Institute of Family Studies (AIFS) report commented recently that “research has shown that the quality of the home learning environment during a child’s first three years of life is associated not only with cognitive development at age 4–5 years but also with educational achievement at school and beyond”. Moreover, “[a] poor home learning environment ... has been shown to be associated, in the short term, with poorer language development, deficits in school readiness and impaired cognitive development by the age of 3” and, in the longer term “is associated with poor academic achievement at school and lower levels of education, employment and earnings in adulthood”.⁵⁹ **Children and young people in the care system may have been subject to disrupted early lives**

⁵⁶ The possible dimensions of the problem for some children is indicated by the work of British NGO *Ambitious about Autism*, which suggested in 2014 that up to 20 per cent of Children with autism had been excluded from education in the previous 12 months, concluding that “children with autism are disproportionately affected by both formal and informal school exclusion” (viewed 16 September 2015)

⁵⁷ In Britain, “head teachers should, as far as possible, avoid excluding any looked-after-child” with steps taken to assess and address that child’s support needs. Department for Education 2014, page 13

⁵⁸ Nash J and Beauchamp T 2015, page 6

⁵⁹ Yu M and Daraganova G 2015, page 63

and therefore have to deal with the ongoing educational impact of those early home experiences.⁶⁰

A new report from the Western Australian Commissioner for Children and Young People considers the implications of early years' education (dis)engagement and provides examples of effective programs that address the needs of disadvantaged young people.⁶¹

I believed the message at home – I didn't think I could do anything.

The School / Home Relationship

5.12 The Western Australian report referred to above (5.10) looks at the nature of and implications for children and young people of disengagement from school, suggesting that "the contexts in which students live and learn are integral to how engagement occurs. One critical context, clearly, is the school. The other is the family and home environment".⁶²

5.13 School retention rates for young people in out of home care is an 'Indicator of Change' in *The National Framework for Protecting Australia's Children 2009–2020* in an environment where "young people disconnected from their families, schools and communities is recognised as a significant risk factor".⁶³ The necessary response is "a unified approach that recognises that the protection of children is not simply a matter for the statutory child protection systems".⁶⁴

5.14 The home/school relationship is critical for successful education. Children in care face particular challenges in this regard, often having had difficult home environments for at least some of their school careers. **Education participation is undermined by changing placements (and consequently carers) and the associated difficulty of building good communication and rapport between school and home.**

⁶⁰ Ibid page 74 – "To sum up, the home learning environment was related to children's later academic performance through children's early cognitive development and school readiness."

⁶¹ Hancock K.J and Zubrick S.R 2015, page 56

⁶² *ibid*, (page 19) has a helpful list of "indicators of disengagement" at page 27.

⁶³ *Ibid* , which places this in a broader list of challenges of exclusion and disadvantage (page 21)

⁶⁴ *Ibid* (page 6)

5.15 Carers need to be committed to “creating a home environment in which education is valued and in being there to provide a continuity of assistance to the children and young people with their schoolwork”.⁶⁵ Actors within the education system need to be sensitive to this environment and do what they can to develop and sustain meaningful engagement with the carers and professionals who are supporting children in care.

5.16 The literature reminds us about the “sadness that many foster children felt about their separation from biological family members, and their worry about these parents and siblings” as well as “a sense of confusion about the status of their cases and worry about what would happen to them”.⁶⁶ Children in care must be supported in the face of disruption and a range of stressors in their lives. **Schools can help with this, especially through the development and ongoing management of an appropriate Individual Education Plan.**

I couldn't concentrate as I worried about my brothers and sisters in other foster homes.

5.17 Disruption due to unstable and discontinuous home lives and having to move after entering the care system has significant implications for schooling. A recent study notes that of those consulted, “approximately 31 per cent of respondents reported attending three or more primary schools while in care (proportions ranged from 18 per cent in ACT to 36 per cent in SA and TAS). This represents considerable disruption even over the maximum six or seven years of primary school, with children and young people trying to cope with different instructional styles and curriculum interpretation, in a new social milieu”.⁶⁷

5.18 The CREATE Foundation looked at the impact of school moves on educational outcomes for children in care, reporting that the average is for moves to between three and seven different schools⁶⁸. The practical implication is that these children miss coursework, compounding the disruptive impact of moving schools in the context of placement instability. Not surprisingly, this instability is seen to “significantly affect educational outcomes”.^{69 70}

⁶⁵ McDowall, J. J 2013, page xx1

⁶⁶ Finkelstein M, Wamsley M, Miranda D 2002, page 19

⁶⁷ McDowall, J. J 2013, *op cit*, (page xx1)

⁶⁸ CREATE Foundation 2012, *op cit*, (page 26)

⁶⁹ *Ibid* page 27

5.19 A comprehensive 2013 report from the Irish Ombudsman for Children looked at disruption in some detail, quoting one stakeholder's opinion -

Moving the children around from place to place, because with that goes moving from school to school, moving from curriculum to curriculum, moving from friends to friends, and none of this helps to build children's educational or, indeed, social [self-]worth.⁷¹

5.20 Disruption is a feature of the normal transitions that any school child experiences, for example when moving from primary to high school. It is important to support children in care with disabilities through such transitions.⁷²

5.21 Researcher Joseph MacDowall has observed that the "prevalence of children and young people with a disability living in out of home care demands support for the children, their carers and families".⁷³ The need for broader dimensions of support informed the Mullighan Inquiry, following which the Commissioner recommended mandatory specialist training for all carers and potential carers of children and young people with disabilities.⁷⁴

You can have a holistic approach and all the programs in place but if you haven't got stability of placement then it all falls apart.
(an educator)

Relinquished Care

5.22 A small number of parents voluntarily place children with disabilities into out of home care.⁷⁵ This dramatic step suggests an intensity of needs beyond that family's capacity to cope, requiring the state to provide a solution.

Describing the situation of three families that were considering relinquishing care of their children with disability due to care demands, the Council for the Care of

⁷⁰ The Flexible Learning options (FLO) Program is an important South Australian initiative in this area.

⁷¹ Darmody M, McMahon L, Banks J 2013, page 74

⁷² Nash J and Beauchamp T 2015, page 21

⁷³ Ibid page 8

⁷⁴ Hon. E.P. Mullighan QC 2008, page XXVI, Recommendation 18: *That there be mandatory specialist training for all carers and potential carers of children and young people with disabilities in State care [...].*

⁷⁵ Equal Opportunity and Human Rights Commission (Victoria) 2012— *see from page 32*

Children reported that “[t]hey said that voicing such thoughts was accompanied by a sense of hopelessness and feelings of failure”.⁷⁶

NURTURING ASPIRATION

5.23 Children in care with disabilities, as with their peers, “are entitled to an appropriate education, one that is appropriate to their needs, promotes high standards and the fulfilment of potential. This should enable them to -

- achieve their best
- become confident individuals living fulfilling lives, and
- make a successful transition into adulthood, whether into employment, further or higher education or training.”⁷⁷

*The soft bigotry of low expectations is omnipresent for care leavers. Stakeholder voices, national research, and the international literature all reveal a group underestimated and overlooked by others.*⁷⁸

Leaving Care - improved post school transition strategies - work, vocational training and/or higher education

5.24 A 2005 Victorian study identified disadvantages experienced by young people leaving care due to the “abrupt and forced end” to formal support when they turn eighteen. It also flagged potential long-term costs to the community that could result from consequent unemployment, crime, health, housing and child protection costs associated with an intergenerational cycle of care.⁷⁹

Another study noted that despite the disadvantages faced by this group, “[t]he quality and suitability of the school environment to manage, support and effectively engage out of home care in learning is another significant factor that appears to impact on education pathways and success at school”.⁸⁰

⁷⁶ Council for the Care of Children 2014, op cit, (page 21)

⁷⁷ Department for Education 2015, page 92

⁷⁸ *ibid*, page 6

⁷⁹ Quoting from Victorian Centre for Excellence in Child and Family Welfare 2005, quoted in White J and Lindstrom H 2007a (page13). See also British Association for Adoption and Fostering 2015, page 3

⁸⁰ Wise S, Pollock S, Mitchell G, Argus C and Farquhar P 2010, page 6

5.25 In a recent analysis, researchers Harvey et al discuss the impact on young people of the termination of support, reporting that –

Australian studies have found that a large proportion of young people receive inadequate preparation for leaving care and lack the skills to independently manage education, employment, housing, and financial issues after care. Some groups, such as young people with disabilities and those with experience in the youth justice system, have particularly complex and ongoing needs, highlighting the need for cross-sectoral cooperation during transitions from care.⁸¹

The paper asserts that care leavers rarely transition to higher education and that there is no national agenda for improvement, although it does acknowledge helpful initiatives such as South Australia’s system of fee waivers for care leavers wishing to pursue vocational education and training at TAFE.⁸² **The authors describe the disadvantaged environment within which care leavers usually exist and the barriers they face if trying to move on to further education.⁸³**

5.26 Other evidence identifies implications for Aboriginal and Torres Strait Islander students who have further education and occupational aspirations. Of particular concern is the overall experience of schooling, where factors such as “[p]oor attendance patterns and low literacy and numeracy skills combine to affect school retention and therefore completion of the different milestones of secondary education, including Year 12 completion. This, in turn, affects transition into further education and employment”.⁸⁴

I want to grow up and do something good so that people, even non-Aboriginal people, will see me as a good Aboriginal person doing something great.

5.27 The 2010 report, *CIAO, Care-system Impacts on Academic Outcomes* makes a series of recommendations that warrant consideration by the Select Committee as they are relevant to this State as well as Victoria,⁸⁵ with recommendations six

⁸¹ Harvey A, McNamara P, Andrewartha L and Luckman M 2015, page 18

⁸² Ibid page 18

⁸³ Ibid page 48

⁸⁴ Karmel T, Misko J, Blomberg D, Bednarz A and Atkinson G 2014, page 13. See too - Closing the Gap Clearinghouse 2014, page 1

⁸⁵ Wise S, Pollock S, Mitchell G, Argus C and Farquhar P 2010, op cit. page 57.

to nine proposing action in relation to -

- teacher training and resources
- targeted education supports and evidence-based alternative education programs
- strengthening Individual Education Plans, and
- establishing a system to re-engage those who drop out of school.

Scottish interest groups similarly addressed the need for holistic transition processes, recommending in 2014 that –

The Scottish Government should publish accessible briefings to clarify how health, education, social care and other areas should interlink through the transitions process. These should clarify the values, principles and recommendations that underpin legislation and policy. The briefings should be accessible to all, including those undergoing the transitions process, and relevant to all professionals.⁸⁶

CULTURAL APPROPRIATENESS

5.28 Policy and practice must support the wellbeing of children and young people across our diverse, multicultural society. We should understand that “[c]ulture is pervasive and provides the context that gives meaning to what constitutes abusive or neglectful behaviours among caregivers from all cultural groups.”⁸⁷ So, while acknowledging common risk factors that may lead to young people being taken into care, families from CALD backgrounds may “also experience a number of unique challenges and stressors” that lead to engagement with the child protection system.⁸⁸

5.29 **Schools have a part to play in building a cohesive social network** that is inclusive of the needs and aspirations of young people in care who are dealing with any of a range of issues–

⁸⁶ Together - Scottish Alliance for Children’s Rights 2014, page 83

⁸⁷ Sawrikar P 2009, page 23

⁸⁸ Kaur, J 2012, page 12. This suggests CALD related stressors include – migration and acculturative stress / displaced sense of belonging and cultural identity / perceived or experienced racism and discrimination / low English proficiency / Intergenerational conflict / insufficient awareness of institutional systems and local services available / loss or lack of extended family and social community supports / poor settlement experience in period after arrival in new country / socioeconomic disadvantage.

“By actively promoting the needs and interests of students and families from culturally diverse backgrounds and building relationships of trust and understanding with parents and carers, schools can make a positive difference to CALD students’ mental health and wellbeing. Having a positive sense of belonging in both settings helps children move between cultures with greater ease and confidence and increases their motivation and engagement at school.”⁸⁹

RESOURCES

Existing Programs

5.30 GCYP notes good South Australian education related practice through processes such as the Keeping Safe Curriculum⁹⁰, the ‘Team Around the Child’ model⁹¹ and the SMART Practice framework⁹². New initiatives also can be noted such as DECD’s introduction of up to 60 ‘child wellbeing practitioners’ to help identify and support at-risk children and families.⁹³

Theory and Practice

5.31 School staff should have sound understanding of effective, trauma informed educational theory and practice to maximise opportunities for school children in care -

“All schools ought to have sufficient resources to equip staff with professional learning, ongoing in- service training and support, so as to be able to effectively teach and support students who are clearly at risk of disengaging as a result of previous, childhood abuse and/or trauma.”⁹⁴

The Rapid Response Priority for Children in Care

5.32 Rapid Response is part of the State Government’s *Keeping Them Safe* commitment. It recognises that “children and young people under guardianship

⁸⁹ See the *Kids Matter* discussion of Cultural diversity and children's wellbeing at -

<https://www.kidsmatter.edu.au/families/about-difference/cultural-difference/why-culture-matters-children%E2%80%99s-development-and>

⁹⁰ http://www.decd.sa.gov.au/teachingandlearning/files/links/acnews_issue_11_web_final.pdf

⁹¹ News Release, Hon Susan Close, Minister for Education and Child Development, 28 August 2015

http://www.decd.sa.gov.au/speced/files/links/teamaroundthechildguide_ma.pdf

⁹² <http://www.childhood.org.au/for-professionals/workshops-and-seminars/smart-schools-supporting-vulnerable-students/projects-in-south-australia>

⁹³ http://www.premier.sa.gov.au/images/news_releases/2015/15_08Aug/wellbeingpracitioners.pdf

⁹⁴ Education to Employment (e2e) Working Group 2015, page 31

often have difficulty in accessing health, housing, education, welfare services and employment. They may have significant medical, psychological, developmental educational and behavioural problems as well as other disabling conditions.”⁹⁵ Among other things, it prioritises access for children in care to appropriate support and services. It has made a deep impression in several ways, including through more coordinated service responses and raising the profile of children under guardianship in a positive way.

In education alone, Rapid Response saw the introduction of Individual Education Plans, data sharing on educational results and enrolments, training for teachers in managing abuse related trauma and a financial commitment to school retention strategies.

The Disability Discrimination Act and the Disability Standards for Education

5.33 The *Disability Standards for Education 2005* clarify rights and obligations under the Disability Discrimination Act to ensure that students with a disability can gain access and participate on the same basis as other students, including in relation to enrolment, curriculum development, accreditation and delivery, student support services and elimination of harassment and victimisation.⁹⁶ Providers have three main obligations: to consult, to make reasonable adjustments, and to eliminate harassment and victimisation.⁹⁷ GCYP suggests that the circumstances of a student in care should inform the assessment of what is reasonable.

5.34 White and Lindstrom provided the instructive example of ‘Elly’, a young woman with an intellectual disability whose personalised program accommodated her strong interest in horses -

*Due to long term physical and sexual abuse, and lack of education, Elly is unable to participate successfully in a mainstream class. However, she is now attending school for some subjects, is socialising at school, has goals for her future and has been accepted as an enthusiastic member of the horse riding community.*⁹⁸

⁹⁵ DECD 2014, page 29

⁹⁶ <https://education.gov.au/disability-standards-education>

⁹⁷ Ibid Sections 3.3 and 3.4

⁹⁸ White J and Lindstrom H 2008, pages 12/13

5.35 Pragmatic factors also impinge upon the capacity to support positive outcomes for the children and young people. An example flagged in a recent national survey is the finding “that 84 per cent of public school principals said they have had to divert funds from other parts of school budgets because they do not have the resources for students with disability”.⁹⁹ Observations have been made about the capacity to access adequate resources in other systems.¹⁰⁰

Allied health and other professional support

5.36 Professional support in schools necessarily must go beyond what teachers and/or SSOs reasonably can offer.

Individual children and young people in care with disabilities may need access to support at school from allied health and other professionals with specialised skills that respond to their individual circumstances (e.g. speech pathologists, psychologists, occupational therapists). A student’s Individual Education Plan should identify and accommodate these resources and be regularly updated. Care must be taken to ensure that appropriate professional competencies are available to assess and meet individual special needs, including in relation to disabilities.

Interagency case conferencing with the team and the kid is good but the sheer work of organising and writing it up takes a huge amount of time.

(Social worker)

The government should have Aboriginal workers working with Aboriginal kids.

Improved Data

5.37 The Australian Institute of Health and Welfare reports that children in care “have poorer educational outcomes than other children” (aspects of which may be poorer grades, lower scores on standardised tests, developmental delays, higher rates of special education placements and repeating grades, behavioural and disciplinary problems, and higher absenteeism, truancy and drop-out rates). AIHW therefore advocates for improved ongoing national data collection on the educational outcomes of children in care¹⁰¹, responding to the call from the

⁹⁹ Australian Education Union 2015, page 2

¹⁰⁰ For example - British Association for Adoption and Fostering 2015, page 2

¹⁰¹ Australian Institute of Health and Welfare 2013a, page 1

Community and Disability Services Advisory Council for a national methodology for reporting on relevant educational outcomes.¹⁰²

A complicating issue for understanding and addressing the needs of South Australian children and young people in this sphere is that **there is no consistent definition of disability used across relevant programs**. This may apply most critically in relation to identifying and responding to their psychosocial needs.

¹⁰² Australian Government, *National Framework for Protecting Australia's Children 2009–2020*, <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business> and the National Standards - <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/an-outline-of-national-standards-for-out-of-home-care-2011>.

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Attachment 1

Notes on Human Rights

A Basis in Human Rights Law

The Australian Institute of Health and Welfare (AIHW) suggests that education is integral to the development and wellbeing of children and young people in care and is a gateway to future employment and life opportunities. Unfortunately, local and international studies “have found that children in the care of the state have poorer educational outcomes than other children”, some characteristics of which may be -

- poorer school grades
- lower scores on standardised tests
- developmental delays
- higher rates of special education placements and repeating grades
- behavioural and disciplinary problems, and
- higher absenteeism, truancy and drop-out rates.¹⁰³

These characteristics resonate with the World Health Organisation’s (WHO) socially constructed definition of disability as “an umbrella term for impairments, activity limitations, and participation restrictions. Disability refers to the negative aspects of the interaction between individuals with a health condition ... and personal and environmental factors¹⁰⁴. Children in care experience a particularly complex interplay of such personal and environmental factors.

GCYP believes that access to, and the opportunity for success within, education for children in care with disabilities is a core right enshrined in international agreements to which Australia is a signatory such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

¹⁰³ AIHW 2013; *Development of an ongoing national data collection on the educational outcomes of children in child protection services: a working paper*, Child welfare series 56. Cat. no. CWS 46. Canberra (page 1).

¹⁰⁴ World Health Organisation 2011; *Summary World Report on Disability*, WHO, Geneva 2011 (p7)

Convention on the Rights of the Child (CRC)

Article 20 (1) of the CRC directs that “[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”.

This direction should be read in the context of the overriding criterion noted in Article 3 that “the best interests of the child shall be a primary consideration”.

The Convention also requires signatory states to ensure that all children have access to education (Article 28) with relevant goals set out in Article 29. These include a direction to ensure development of –

- a child's personality, talents and mental and physical abilities to their fullest potential
- respect for human rights and fundamental freedoms
- respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own, and
- preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

Critical to realising such rights is the requirement identified in Article 23 that “a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community”. A corollary suggested by Dr Maggie Atkinson, then Children’s Commissioner for England, is that “If they have the right, then we adults have a duty to ensure it is fulfilled”.¹⁰⁵

Signatory states also must respond to a disabled child’s right to special care and for effective access to education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner that is conducive to achieving the fullest possible social integration and individual development, including cultural and spiritual development.

¹⁰⁵ in Pellicano P, Hill V, Croydon A, Greathead S, Kenny L and Yates R with Wac Arts 2014; *My Life at School: Understanding the experiences of children and young people with special educational needs in residential special schools* - Centre for Research in Autism and Education (CRAE) UCL Institute of Education University College London (at page 3).

Detention of young people

Article 40 of the *Convention on the Rights of the Child* considers parameters for the detention of young people requiring, among other things, that they are dealt with in a manner appropriate to their wellbeing. Three other United Nations instruments also apply -

- *Standard Minimum Rules for the Administration of Juvenile Justice* 1985 (the Beijing Rules)
- *Guidelines for the Prevention of Juvenile Delinquency* 1990 (the Riyadh Guidelines), and
- *Rules for the Protection of Juveniles Deprived of their Liberty* 1990 (the Havana Rules).

Article 10 of the *International Covenant on Civil and Political Rights* also applies: “*Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status*”.

Operational policy and practice should have regard to the *Standards for Juvenile Custodial Facilities*.¹⁰⁶

Convention on the Rights of Persons with Disabilities (CPRD)

Article 3(h) of the General Principles of the CPRD calls for “[r]espect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities”.

More detailed treatment in Article 24 stresses the principle of inclusive education, with sub clause (c) mandating “reasonable accommodation of the individual's requirements”, a principle of some importance for individual children in care. Impediments to inclusive education for children with disabilities that can be intensified if they also are children in care are factors such as -

- low priority for children with disabilities among decision-makers
- lack of community awareness and support
- reluctance to admit children with severe and complex disabilities
- inaccessible buildings and curricula that are not adapted to the special needs of children with disabilities
- shortage and/or lack of appropriate training for teachers, at all levels
- lack of support from special schools where these exist, and

¹⁰⁶ Australian Juvenile Justice Administrators 1999, *Standards for Juvenile Custodial Facilities* (Revised Edition March 1999)

- lack of targeted funding.¹⁰⁷

The CRPD affirms *Convention on the Rights of the Child* principles with respect to access to lifelong learning opportunities.

Productivity Commission Findings 2015

In its *Report on Government Services 2015* the Productivity Commission discussed services for people with disabilities using the WHO understanding of disability. Among other things, this sees disability as “a complex phenomenon, reflecting an interaction between features of a person’s body and features of the society in which he or she lives”.¹⁰⁸

Given that education is a particularly significant part of young people’s lives, the Commission devoted some attention to education and the experiences children and young people in the protection system. Importantly, it identified improved education as an indicator of governments’ objective of maximising life chances “by ensuring children in care have their educational needs met”. Moreover -

*Factors outside the control of child protection services have an influence on the educational outcomes of children on guardianship and custody orders, and care should be exercised when interpreting results. Specifically, children in the child protection system often have high needs and have often experienced significant disadvantage (for example, family stress, trauma and violence, mental illness and disability).*¹⁰⁹

The Productivity Commission noted that, over the years, “with few exceptions, the proportion of children on orders achieving national reading and numeracy benchmarks was less — at times significantly less — than for all students”¹¹⁰. It referred to a 2012 experimental data collection for Queensland and South Australia undertaken by the AIHW which indicated “that the proportion of year 5 children on orders achieving at or above the national minimum standards in the NAPLAN domains ‘reading’ and ‘numeracy’ are significantly lower than the results for all students in year 5”. , Relevant government school data for South Australia showed that -

¹⁰⁷ UNICEF 2007; *Promoting the Rights of Children with Disabilities* – Innocenti Digest 13 (2007) p17

¹⁰⁸ Productivity Commission; *Report On Government Services 2015*, Chapter 14
<http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/services-for-people-with-disability/rogs-2015-volume-f-chapter14.pdf>

¹⁰⁹ Productivity Commission; *Report On Government Services 2015*, Chapter 15
<http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volume-f-chapter15.pdf> see Box 15.25 in particular.

¹¹⁰ Ibid

- only 60.3 per cent of year 5 students on orders achieved at or above the national minimum standard in the NAPLAN domain 'reading' compared with 90.7 per cent of all year 5 students, and
- only 55.9 per cent of year 5 students on orders achieved at or above the national minimum standard in the NAPLAN domain 'numeracy' compared with 91.7 per cent of all year 5 students.

Disability Discrimination Act (DDA)

The *Disability Standards for Education 2005* clarify the rights of people with disability and the obligations of education providers under the DDA. They seek to ensure that students with disability can access and participate in education on the same basis as other students, including in relation to enrolment, participation, curriculum development, accreditation and delivery, student support services and elimination of harassment and victimisation.¹¹¹

Providers have three main obligations: to consult, to make reasonable adjustments¹¹², and to eliminate harassment and victimisation. An adjustment is reasonable, in relation to a student with a disability if it balances the interests of all parties (with the important proviso that judgments about what may be reasonable may change over time). A holistic assessment must be made of the particular circumstances, including appreciation of the student's disability, their views, the effect of the adjustment on all parties and its costs and benefits.¹¹³ The GCYP affirms that that the circumstances of a student in care should inform the assessment of what is reasonable.

All students with a disability who receive funding under Commonwealth targeted programs are required to have an Individual Plan (IP) that should identify a student's capacity to access and participate in educational and other opportunities and enable adjustments to facilitate greater

¹¹¹ Section 1.3 of the *Disability Standards for Education 2005* reflect the education requirements of the *Disability Discrimination Act* by noting that -

The objects of these Standards are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

¹¹² See Section 3.3 of the *Disability Standards for Education 2005*

¹¹³ Ibid Section 3.4

access and participation. This parallels the South Australian provision that children should have an Individual Education Plan (IEP) and that those with a disability have a Negotiated Education Plan.

It makes sense that a single planning and engagement process occurs with and for a student with a disability who also is in care to develop a plan that effectively addresses their educational and personal needs. The points are that the young person should be involved in the plan's development and are part of a dynamic, ongoing interactive process.

White and Lindstrom provide the instructive example of 'Elly', a young woman with an intellectual disability whose personalised program accommodated her strong interest in horses -

"Due to long term physical and sexual abuse, and lack of education, Elly is unable to participate successfully in a mainstream class. However, she is now attending school for some subjects, is socialising at school, has goals for her future and has been accepted as an enthusiastic member of the horse riding community".¹¹⁴

Importantly, we all must recognise the practical implications of the Standards as the Australian Education Union does in its submission to the 2015 Review of the Disability Standards, by arguing for adequate resourcing to achieve the Standards' aims. For evidence that there are problems in this sphere, the AEU refer to its own *2015 State of Our Schools Survey*, which, among other things, "found that 84 per cent of public school principals said they have had to divert funds from other parts of school budgets because they do not have the resources for students with disability".¹¹⁵ Other observers draw similar conclusions.¹¹⁶

National Framework for Protecting Australia's Children 2009-2020

School retention rates (Years 10 & 12) of young people in out-of-home care or under guardianship are an 'Indicator of Change' in the *National Framework for Protecting Australia's Children 2009-2020* in a context where a significant risk factor is "young people disconnected from their families, schools and communities"¹¹⁷. The requirement is for "a unified approach that recognises that the protection of children is not simply a matter for the statutory child protection systems"¹¹⁸.

¹¹⁴ White J and Lindstrom H 2008, *Young People's perspectives (and their carers) – School Retention Action Plan: Stage 3 Evaluation*, Department for Families and Communities, June 2008 (pages 12/3)

¹¹⁵ Australian Education Union 2015; *Submission to the Review of the Disability Standards for Education 2005*, AEU South Melbourne, June 2015 (page 2)

¹¹⁶ For example - British Association for Adoption and Fostering (May 2015) op cit (page 2)

¹¹⁷ Ibid , which places this in a broader list of challenges of exclusion and disadvantage (page 21)

¹¹⁸ Ibid (page 6)

Some direction is given to this process by the Australian Institute of Health and Welfare which has highlighted the importance of *Children's rights and participation* (through participation and engagement in education) and high levels of social and emotional *Child wellbeing* (including through a sense of positive cultural identity).¹¹⁹

¹¹⁹ AIHW; *Scoping reportable measures for the National Framework for Protecting Australia's Children 2009–2020: supporting outcome 1*. Working paper. Cat. no. CWS 45. AIHW Canberra (page 9).

Attachment 2



Government of South Australia

Office of the Guardian
for Children and Young People

***Children and Young People in State Care
in South Australian Government Schools
2007-2014***

March 2015

Office of the Guardian for Children and Young People

GPO Box 2281

Adelaide SA 5001

DX 115

Ph 08 8226 8570

Fax 08 8226 8577

gryp@gryp.sa.gov.au

www.gryp.sa.gov.au

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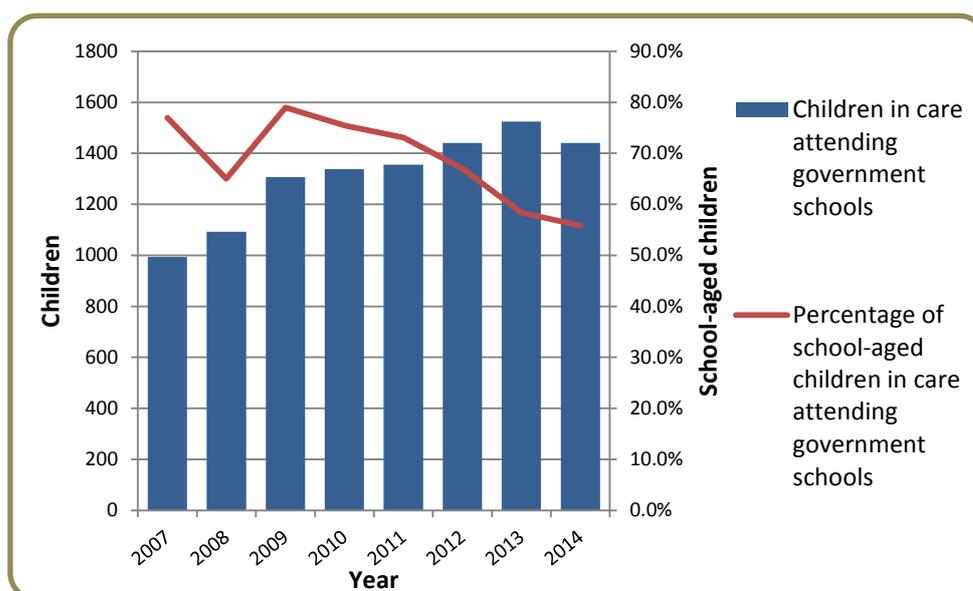
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1 Introduction

This report is about participation and academic results (NAPLAN) for children and young people under the guardianship of the Minister from data provided by the Department for Education and Child Development (DECD). Comment focuses on areas of significant difference between, or change in, results for children in [state] care¹²⁰ and results for all children in government schools. It was released publicly for the first time in 2014.

At the end of Term 3 2014, there were 1,441 children in care in government schools. After a steady rise in previous years, the *number* of children in care 'located in and actively attending'¹²¹ a government school in 2014 has fallen six per cent on the previous year. The *proportion* of all school-aged¹²² children in care attending government schools continues to decline: from 79.0 per cent in 2009 to 55.8 per cent in 2014 (see *Chart 1*).

Chart 1: Children in care attending government schools – total number and proportion of all school-aged children in care, 2007-2014



The proportion of children in care but not identified in government schools includes those who:

- are enrolled in non-government schools;
- students over the age of compulsion who have left school; and

¹²⁰ For the purposes of this report the terms “in state care” or “in care” refer to those children and young people under guardianship, or in the custody, of the Minister for Education and Child Development.

¹²¹ The phrase ‘located in and actively attending’ is used by DECD in their report to the Office of the Guardian.

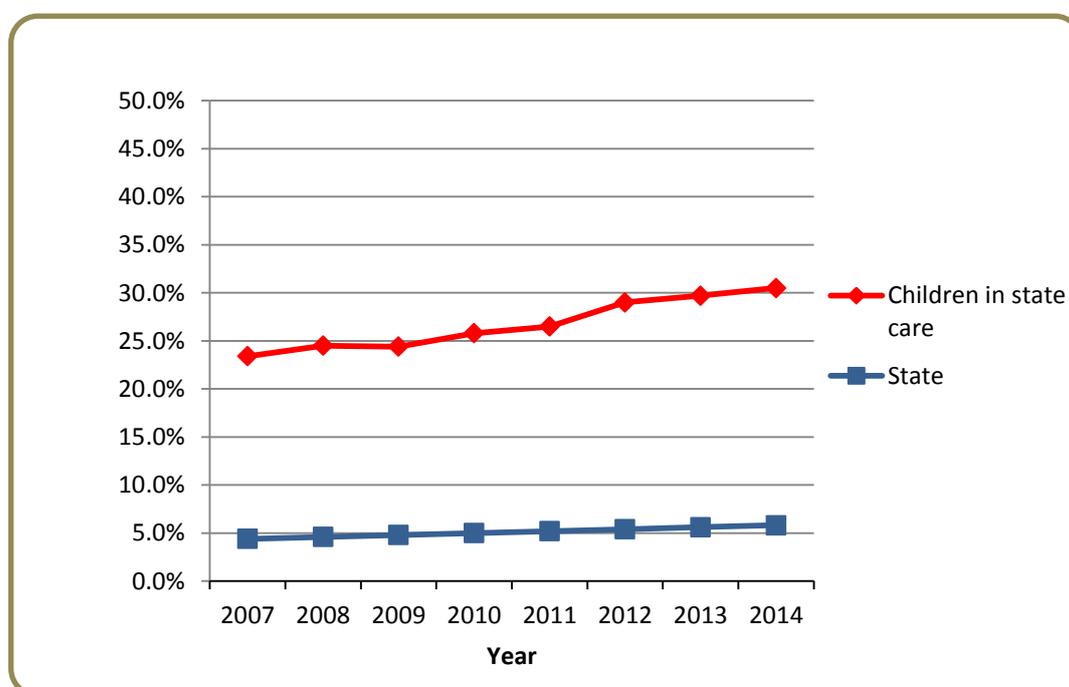
¹²² School-aged is 5 to 17 years.

- data quality issues, including the ability to match records due to the use of alias names.

2 Profile

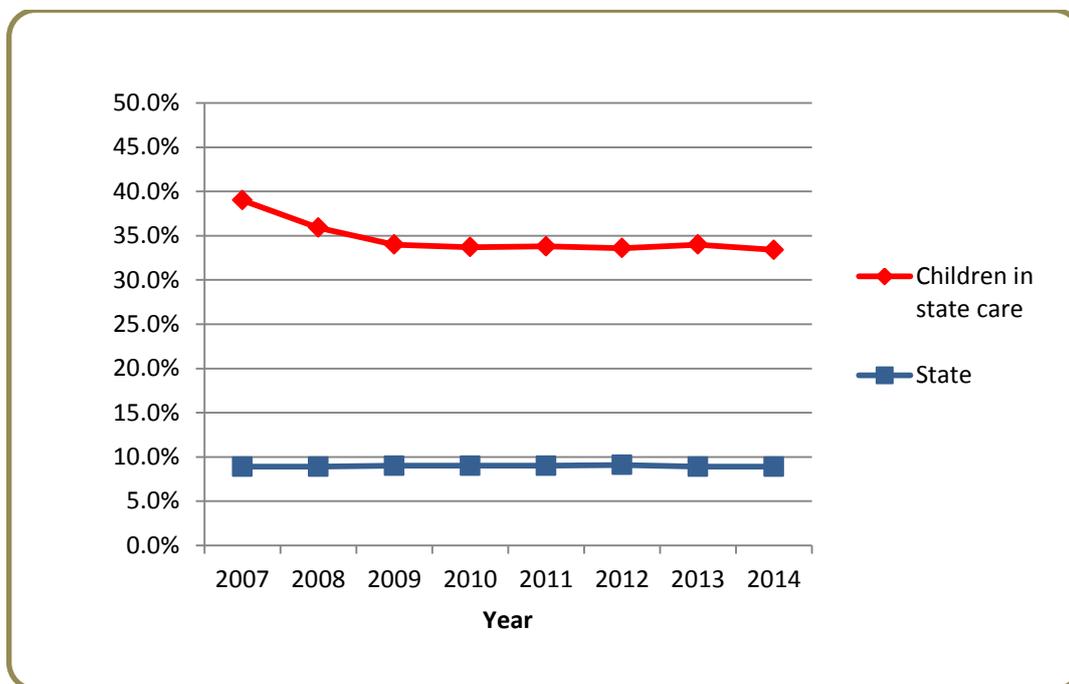
The proportion of children in care in government schools who identify as Aboriginal or Torres Strait Islander is significantly higher than the state average (see *Chart 2* below). The disproportion, though, is consistent with the profile of children and young people in care.

Chart 2: Aboriginal and/or Torres Strait Islander children in care compared with state school population as a percentage, 2007-2014



Similarly, the proportion of children in care in government schools who have an identified disability is significantly higher than the state average (see *Chart 3*). The disproportion is similar to the disproportion for children in care as a whole, though the criteria for disability used within education are wider than those used for disability services.

Chart 3: Children with a disability, children in care compared with state school population as a percentage, 2007-2014



From 2007 to 2010, the percentage of children in care in government schools with a disability dropped steadily, from 39 per cent in 2007, to 33.7 per cent in 2010. Since then the percentage has remained almost constant.

Table 1 below shows the categories of primary disability. The numbers are too small in most categories to compare children in care with state totals. However, in the categories of Language and Communication¹²³, Intellectual Disability, and Speech and/or Language, children in care feature much more remarkably. For example, the proportion of children in care in government schools in 2014 with an intellectual disability is nearly eight times that of the state average.

¹²³ In 2007 the disability categories were revised and ‘Language and Communication’ was replaced with ‘Autistic/Asperger’s Disorder’, ‘Global Development Delay’, and ‘Speech and/or Language’. As assessments of children are done, the new categories replace the old.

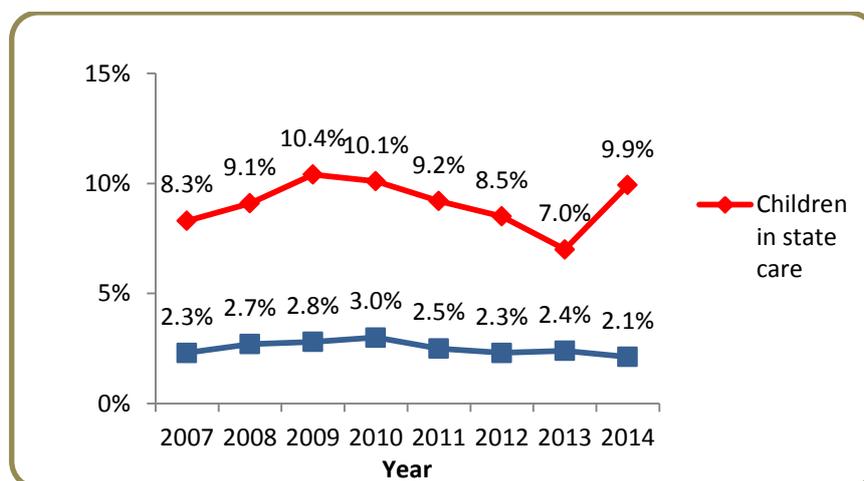
Table 1: Category of primary disability, children in care compared with school population, 2014

Primary Disability	Children in Care		State %
	Number	% of Children in Care	
	2014	2014	2014
Language and Communication	68	4.7	1.8
Intellectual Disability	164	11.4	1.5
Speech and/or Language	126	8.7	2.6
Global Developmental Delay	44	3.1	0.4
Autistic / Asperger's Disorder	51	3.5	1.9
Physical Disability	12	0.8	0.3
Sensory Disability (Hearing)	14	1.0	0.4
Sensory Disability (Vision)	3	0.2	0.1
TOTAL	482	33.4	9.0

3 Suspensions and exclusions

Data from Term 2, 2007 to 2014 show that from 2009 to 2013 suspension of children in care had steadily dropped. In 2014, however, there is a sharp rise, with the rate almost returning to the 2009 rate. Suspensions for the state as a whole have remained relatively constant (see *Chart 5*).¹²⁴ Suspensions by age groups shows that children in care are more likely to be suspended when aged 12 or under when compared to the state as a whole. (see *Chart 6*).¹²⁵

Chart 5: Rate of suspensions, children in care compared with school population, 2007 to 2014, Term 2



¹²⁴ The figures in *Graph 3* represent individual children suspended in Term 2, 2012, not the number of episodes of suspension.

¹²⁵ The student's age is calculated at the time of the incident, and students with multiple incidents may be reported in two groups if their date of birth falls in Term 2.

Chart 6: Suspensions by age group, children in care compared to total school population, 2104 Term 2.

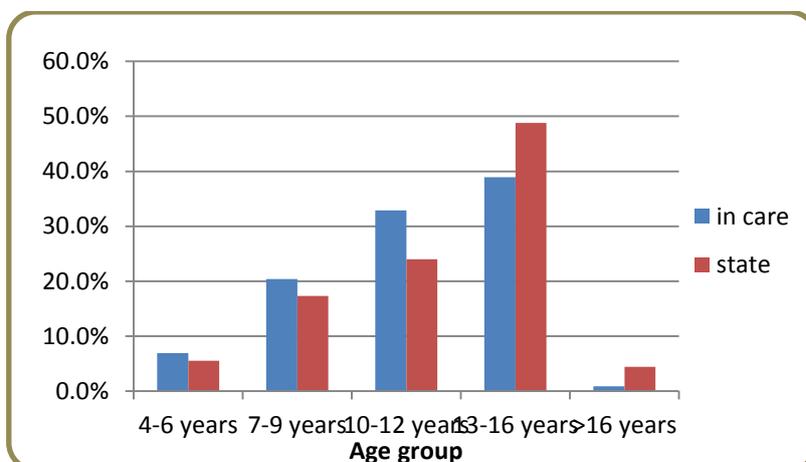
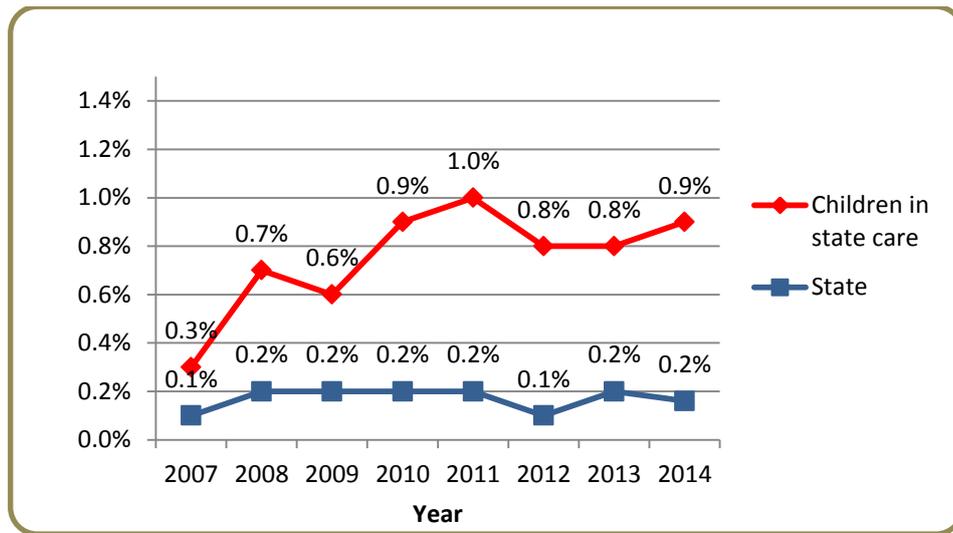


Table 2: Main reasons for suspension, children in care and school population, 2014

	Children in care %	State %
Violence – threatened or actual	45.4	37.3
Threatened good order	26.9	29.7
Threatened safety or wellbeing	15.3	15.1
Acted illegally	2.8	3.0
Interfered with rights of others	3.2	5.7
Persistent and wilful inattention	6.5	9.2

Similar to suspensions, children in care in government schools are more likely to be excluded from school. However, little can be concluded from this data as the actual numbers are very low. In Term 2, 2014, for example, there were 14 exclusions involving 14 children in care (see *Chart 7*).

Chart 7: Rate of exclusions, children in care compared with school population, 2007 to 2014, Term 2



4 Absence

There is little difference in absence rates for children in care in government schools compared with the school population. When comparing absence rates for children who have a disability the absence rate for children in care with a disability is lower, that is, they are more likely to be attending than those who have a disability but are not in care. This is also the case for Aboriginal children who are in care (see *Table 3*). This has been consistent since GCYP commenced monitoring.

Table 3: Absence rates for children in state care and school population group, Semester 1, 2014

Cohort	Semester 1, 2014		
	Children in care		State rate %
	Number	Absence rate %	
Total	1429	10.6	9.3
Males	768	11.6	9.3
Females	661	9.4	9.3
NESB	256	9.4	7.3
Disability	479	11.7	12.9
Aboriginal	435	13.9	19.8
Country Schools	570	10.7	10.2
Metro Schools	859	10.5	8.9
Primary Schools	986	9.2	8.0
Secondary Schools	455	13.6	11.7

5 Literacy and numeracy

National Assessment Program - Literacy and Numeracy (NAPLAN) testing is carried out each year for children in years three, five, seven and nine. In each of these year levels percentages *at or above the National Minimum Standard* demonstrate that the results for children in care continue to rate significantly lower than totals for the state (see *Charts 8-11*).¹²⁶

According to the NAPLAN website the *National Minimum Standard* represents the 'minimum acceptable standard of knowledge and skills without which a student will have difficulty making sufficient progress at school'¹²⁷. Students who do not reach this minimum standard are 'likely to need focused intervention and additional support to help them achieve'.¹²⁸ In 2014, nearly two-thirds of year nine students in care would have difficulty making sufficient progress in writing without focused intervention. (See *Chart 11*).

Across the board, the percentages of children in care exempted from NAPLAN testing are significantly higher than the state figures and 2014 shows a sharp increase in the disparity (see *Chart 12*).

¹²⁶ Year on year comparisons cannot reliably be made as it is a different group of children sitting the tests each year and, for children in care, the actual numbers are relatively small.

¹²⁷ Australian Curriculum, Assessment and Reporting Authority 2013, *NAPLAN Achievement in Reading, Persuasive Writing, Language Conventions and Numeracy: National Report for 2013*, Australian Curriculum, Assessment and Reporting Authority, Sydney, viewed 30 May 2014, <<http://www.nap.edu.au/>>, p. v.

¹²⁸ Ibid.

Chart 8: NAPLAN results for Year 3 - Percentage of children *at or above the National Minimum Standard* comparing state with children in care, 2008 to 2014

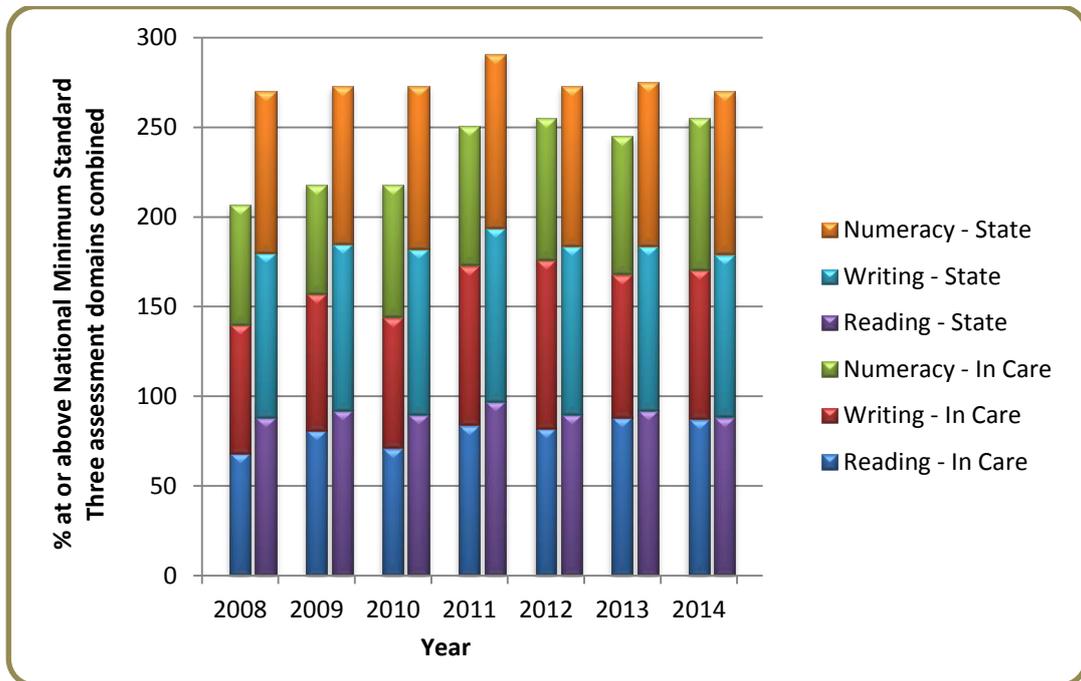


Chart 9: NAPLAN results for Year 5 - Percentage of children at or above the National Minimum Standard comparing state with children in care, 2008 to 2014

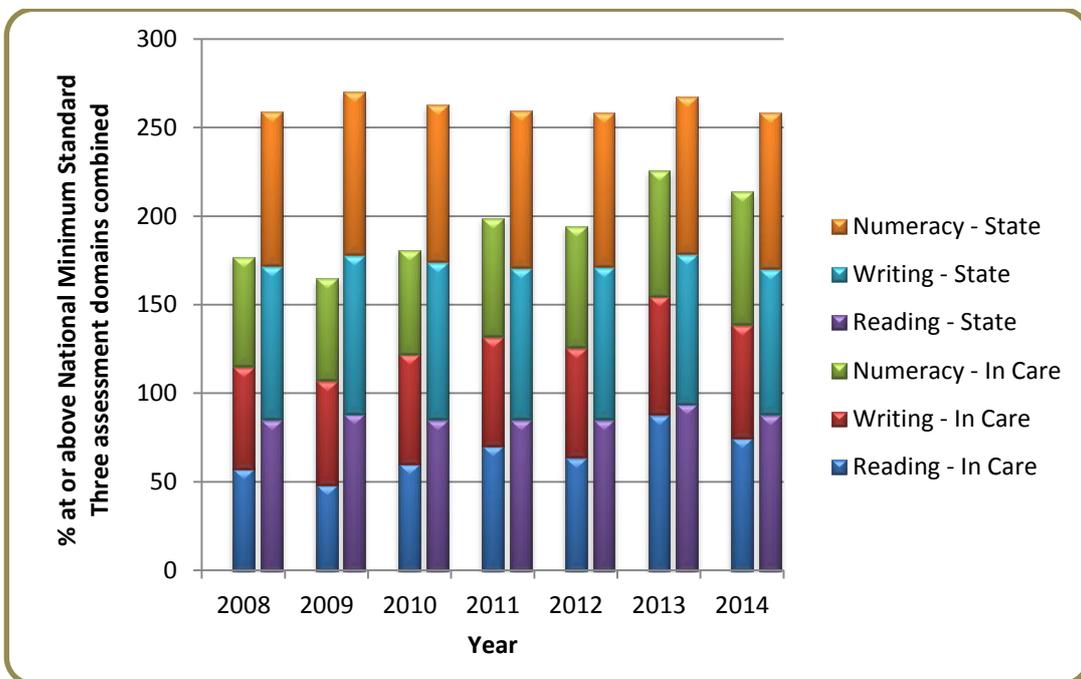


Chart 10: NAPLAN results for Year 7 - Percentage of children at or above the National Minimum Standard comparing state with children in care, 2008 to 2014

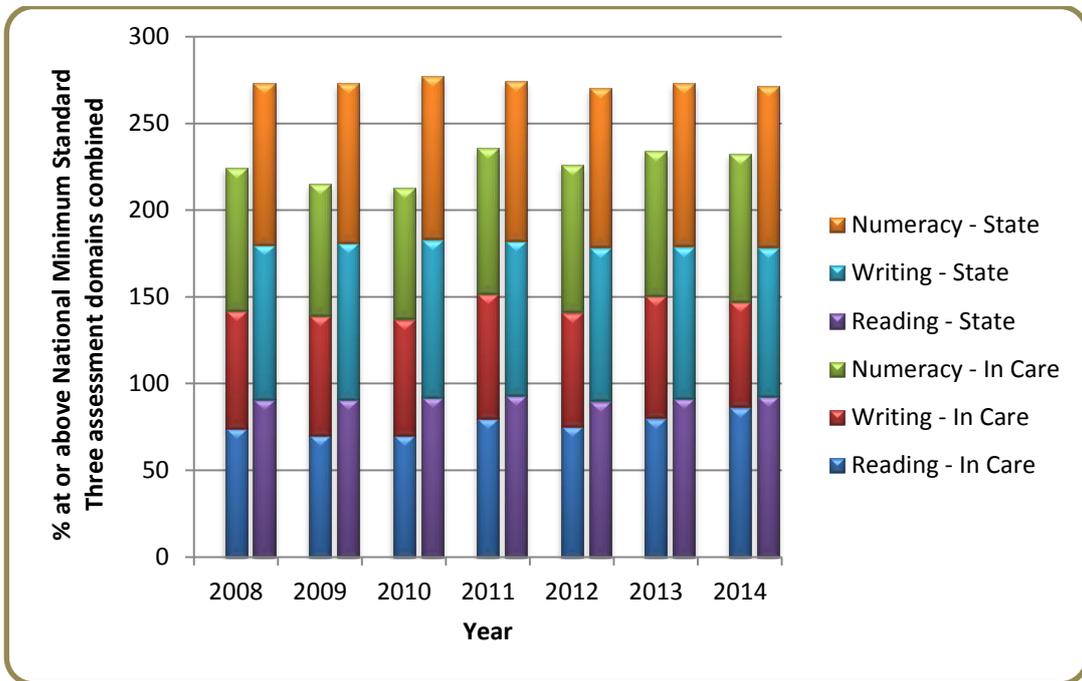


Chart 11: NAPLAN results for Year 9 - Percentage of children at or above the National Minimum Standard comparing state with children in care, 2008 to 2014

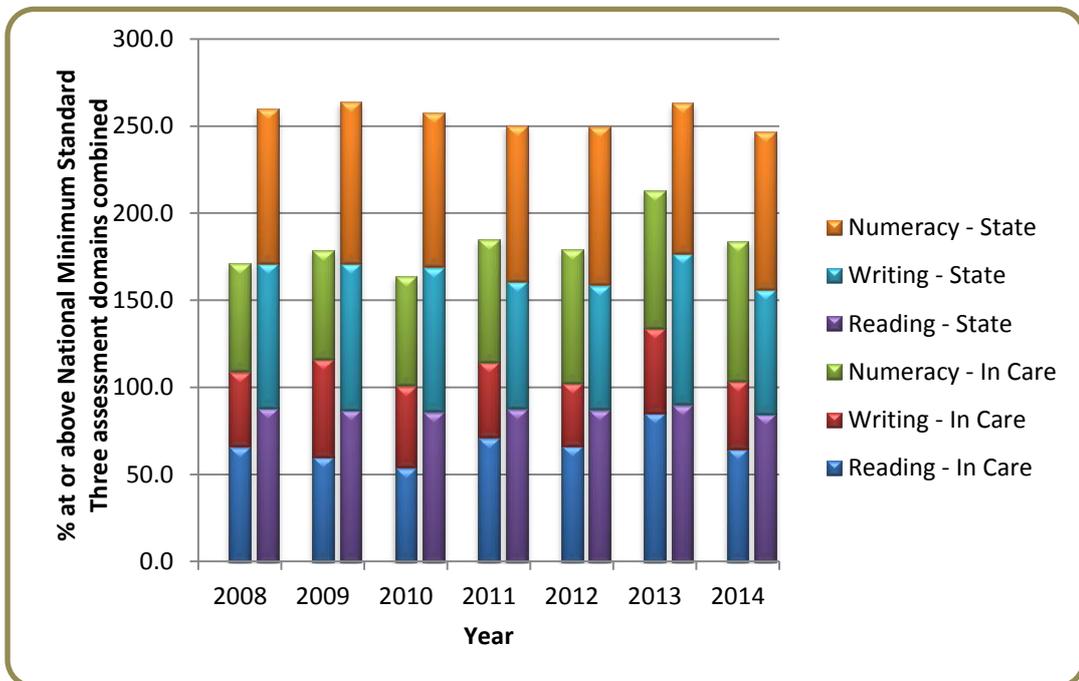
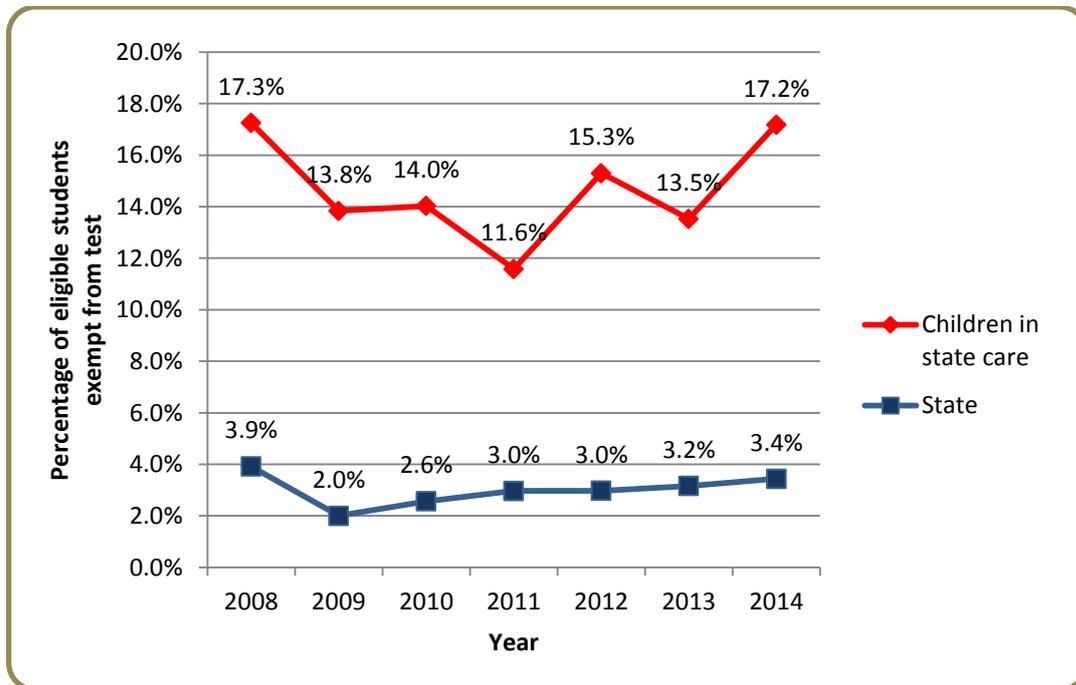


Chart 12: Students exempt from NAPLAN testing, average for all year levels across all domains, 2008 to 2014.



6 Summary

The data in this report demonstrates that:

- As at end Term 3 2014, 55.8 per cent of school aged children under guardianship attended a SA state government school, falling from 79 per cent in 2009.
- A greater proportion of students under guardianship have learning disabilities, notably in speech and language skills.
- A higher proportion of this group is suspended from school.
- Nearly two thirds of suspensions in this group were for children aged up to 12 years.
- The absence rate of this group is only slightly higher than the school population as a whole.¹²⁹
- One in six students under guardianship is exempted from sitting the NAPLAN tests.
- There is a persistent significant gap between this group and their peers in achieving sufficient progress in literacy and numeracy.

The 2014 results, combined with previous years' results, suggest that attention must be paid to:

- Speech and language delays of children before, and on entering, school.
- Alternative disciplinary measures to suspension from school – particularly for younger children.
- Monitoring hours of attendance at school so that part-day absences are minimised.
- Investigation of the reasons for the high rates of exemption from NAPLAN tests.
- Narrowing the gap between students in care and their age peers in literacy and numeracy abilities.

¹²⁹ This does not account for students who are absent for part of the day.