



**Bendigo Autistic Advocacy
and Support Service**

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

The Victoria State Government
Department of Education and Training
Ground Floor 2, Treasury Place
East Melbourne, Vic 3002

E det.regulation.review@edumail.vic.gov.au

Cc. Nathan Bunt
Executive Officer
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

E sarc@parliament.vic.gov.au

Director
Investigation and Conciliation Service
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

E newcomplaints@humanrights.gov.au

Amnesty International
Suite 8, 134 Cambridge St
Collingwood VIC 3066

E vicaia@amnesty.org.au

Submitted: 28th February 2017

Submission re:
Department of Training and Reform Regulations Review 2017



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

Bendigo Autistic Advocacy and Support Service (BAASS) opposes the draft Education and Training Reform Regulations 2017 [draft regulations] as categorically harmful and not within the best interests of child wellbeing, safety and meaningful learning.

BAASS currently provides roles in support, advocacy and facilitates many programs, events and opportunities for the autistic community. First and foremost we are proud to be an autistic founded, led and driven not-for-profit organisation; which is the first of its kind in Australia.

BAASS aims to support autistic people to optimise their potential, through individual and systemic advocacy and provision of services in education and employment and empowering family caregivers and professionals.

Bendigo has a well demonstrated need for support and advocacy with diagnoses of autism in over 1000 families locally. It is our mission and passion to provide this.

BAASS provides a much-needed safe space for the autistic community to access supports only seen in metropolitan areas until now. We run the dynamic computer/multi-media tech and mentor program for adolescents; 'BAASS Tech Hub', a group for technical skills and social opportunities - an invaluable opportunity for networking and learning.

Among other programs and support we facilitate are counselling, further mentor programs, consultancy work (schools, employment, health and community professionals), BAASS Sensory Gymnastics, respite, sensory and education based programs for autistic children struggling at school, resource library and life skills workshops. BAASS also runs a variety of school holiday programs such as 'Introduction to Filmmaking' which are run by BAASS mentors.

A significant proportion of our work is with families requiring assistance in advocating with their autistic children at school; often relating to difficulties obtaining reasonable adjustments and a number of cases involving abuse.

This submission is made in the context of:

- A significant number of students within mainstream schools have disabilities and are subject to restrictive practices.
- A significant number of students being home-schooled are students with disabilities and a major proportion of these families do so out of irreconcilable challenges faced within the school setting.

It is Inexcusable to propose such restrictions and clear human rights violations, which are baseless and are in direct opposition to available research and evidence; and as such are in complete disregard of what is fair, just, ethical or reasonable.



It is with incredible frustration and a sense of irony that we prepare this submission. Not only is our submission prepared at a significant cost to ourselves, our families and clients- but as we have experienced, pleas for meaningful and inclusive school environments and student safety and wellbeing have not only fallen on deaf ears but have been repeatedly made via many sources and have been rejected or ignored. We are under extremely limited time constraints given the nature of our advocacy and support; with many requests for assistance in accessing reasonable adjustments within schools.

Restraint

It is perplexing and abhorrent that the Department of Education and Training would propose draft regulations with no improvements despite review and recommendation by numerous sources. The draft regulations propose to include unregulated restraint and restrictive practices of children as a viable option via Regulation 25 (previously 15). This is unacceptable.

The draft Education and Training Reform Regulations 2017, Division 3.25 25 relate to restraint (currently within the current regulations as Regulation 15);

“A member of staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour that is dangerous to the member of staff, the student, or any other person.”.

Further definition of restrictive practices is outlined by The Australian Law Reform Commission *Equality, Capacity and Disability in Commonwealth Laws* (DP 81) 8.4 *Restrictive Practices-Restrictive practices in Australia* in clarifying the nature of restrictive practices as involving the “..use of interventions and practices that have the effect of restricting the rights or freedom of movement of a person with disability.”.

There is no question that restrictive practices remain common place within schools, which is clearly acknowledged by

- The Australian Law Reform Commission *Equality, Capacity and Disability in Commonwealth Laws* (DP 81) 8. *Restrictive Practices-Restrictive practices in Australia* also recognises that:
People with disability who display ‘challenging behaviour’ or ‘behaviours of concern’ may be subjected to restrictive practices in a variety of contexts, including... schools.

The DET *School Policy and Advisory Guide. Student Restraint* policy recognises that “Physical restraint has been associated with injury and increased trauma to the student and the staff member responsible for the physical restraint.” and that “there **should** be no less restrictive action that could be taken..”. However, there are no mechanisms provided



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

by which to ensure the protection of children's rights are adhered to and sub-standard, non-mandatory guidelines are inconsistently utilised, interpreted and are not monitored within the department. The lack of adequate and detailed legislation regarding restrictive practices within the educational setting gives rise to and enables justification and misuse of these practices and in any situation.

As you may read in the *Bendigo Autistic Advocacy and Support Service Presentation- Parliament Inquiry into Services for Autistic Persons* (2016), our experience has involved supporting and advocating with autistic children having been victim of restraint and seclusion. In these cases the DET is excused under Regulation 15 (proposed as Regulation 25 in the draft regulations 2017), given the likely purposely vague wording. This shocking ambiguity in such a critical and damaging context has and will continue to allow the use of prone restraint, martial arts pressure points, being secluded from peers by way of locked cage-like structures and in small unventilated rooms and numerous other ways, for exhibiting behaviours of concern. The direct result of these experiences is profound and long term trauma and ultimately costs the state significantly in lawsuits resulting from the abuse and/or long term therapy to manage the trauma.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) *Held Back* (2012) report also describes restrictive interventions being used in schools, "...including the use of restraint and seclusion in locked rooms or other spaces, as a behaviour management tool." (2012).

Not only are the requirements per the draft regulations ambiguous, but lack accountability, transparency and regulation. The Victorian Auditor-General's report (2012) also acknowledges that "...policy and guidance material in some key areas, such as restraint, seclusion and parents paying for additional in-school support is either missing or inadequate." This enables schools to use methods of punishment they do not have the training, skills or ethical right to use and violates the rights of children as according to the Victorian *Charter of Human Rights and Responsibilities Act 2006*, which specifically protects all persons to protection from "...torture cruel, inhuman or degrading treatment." (Section 10(a)(b)) and protection of families and children as (Section 17(1)) "...the fundamental group unit of society and are entitled to be protected by society and the State." and that "Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child." (2).

This is further evidenced by Villamanta Disability Rights Legal Service (et al 2017), in reporting that "The Department's approach to reducing and eliminating restraint and violence against students is not in line with the National Framework for Reducing or Eliminating the Use of Restrictive Practices in Disability Services. The wording of Regulation 15, proposed to be Regulation 25, is so broad that it can only benefit those subjecting others to restrictive practices, as it has been."

Julie Phillips, prominent Disability Advocate (2017) notes that despite many report recommendations, very little has changed within the education system. Current Regulation 15 of the Department of Education and Training Regulations (draft regulation 25) is "completely subjective" and has been used by the Legal Division and DET Regional Offices to "excuse any type of assault or false imprisonment of students with disabilities to date.", of which is documented.

The (VEOHRC) *Held Back* report (2012) found that discrimination remains rife within Victorian schools, citing the predominant issues being around inadequate funding, staff training and knowledge (in disabilities) and discriminatory attitudes. Whilst the education system has introduced numerous valuable resources and guidelines, these have been inconsistently applied and not monitored effectively by the DET.



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

The *Held Back* report also highlights that in relation to restraint, there is no independent oversight of restrictive practices within educational settings, yet “Adults using disability services enjoy the independent oversight of the Office of the Senior Practitioner when restrictive interventions are contemplated or used, yet children in our schools do not.”.

Schools are clearly providers for children with disabilities- and it is mandated that children attend schools or an alternative form of education. Yet in our experience, there is a clear bias against families seeking alternative schooling methods and the DET historically cannot provide inclusive environments for many children with disabilities, despite it being lawful as according to (but not limited to):

- *The Disability Act 2006*

Of which Section 4 (a)(b)(d) outlines the purpose of the Act as promoting:

- the rights and inclusion of people with disabilities,
- inclusion
- accountability

- *Disability Discrimination Act 1992*

Of which Part 1.3 (a)(i) serves to eliminate discrimination against persons on the ground of disability in the areas of education.

- *Disability Standards for Education 2005*

Of which Part 1.3 describes the objects of the standards to be

“to eliminate discrimination against persons on the ground of disability in the area of education and training (a); to ensure, 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 (b)

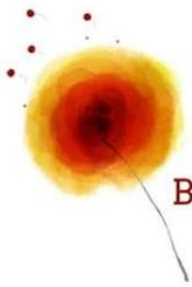
- *UN Convention on the Rights of the Child*

Article 3.1, 3.2 and particularly 3.3: “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 4: States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 23: 1. States Parties recognize 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.

23.3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

Article 27.1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 29.1 States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

Article 37 (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age

- *UN Charter of Human Rights*: Article 5 and 25
“prohibiting any person from being subjected to cruel, inhuman or degrading treatment or punishment.” and having the right to a lifestyle adequate for health and wellbeing. (Article 25(1)).
- *Occupational Health & Safety Act 2004* Which provides guidelines pertaining to legislative duties of employers, employees, contractors etc and the ‘state of knowledge’ about restrictive practices
Specifically **Part 3.1.20.1 (a)(b)**
Part 3.1.20.2 (a)(b) requiring analysis of risk and degree of harm
Part 3.2.21(2)(e) requiring provision of relevant instruction, training and supervision in practices
Part 3.23(1) regarding duties of employers to other persons in ensuring that persons other than employees of the employer are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer.

The Disability Discrimination Commissioner (1996) concurs in stating that “There are not sufficient numbers of ..aides.. available..to meet the need. Of those there are, **there is insufficient training and professional support** provided for them. **They need to be trained in the complexities and sensitivities of their task.**”

Restraint and seclusion of children, by an adult within an educational setting should also be considered a criminal act and can very much be likened to assault as per the *Crimes Act 1958* definition provided in Section 31(2) Subsection (1).

The Senate Community Affairs Reference Committee national report on the ‘*Violence, abuse and neglect against people with disability.*’ (2015) reviewed restrictive practices within schools across Australia and expressed that not only did the treatment of students with disabilities not meet community expectations and standards, but that parents were refused the right to involvement in the planning process or to refuse these practices in relation to their children.

The report further explained that many systemic problems within the education system led to many inappropriate and restrictive practices in the absence of first considering best practice and a wide range of available supportive strategies of a less restrictive nature. As stated by Julie Phillips Review of Education Standards and Training Reform Act Regulations (2017), “the committee was highly disturbed at the evidence around restrictive practice” of which some “constituted a national shame in the committee’s view.”

The Senate Community Affairs Reference Committee



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

Recommendation 19 10.59

“The committee believes that the use of restrictive practice against children must be eliminated as a national priority. The committee recommends the Australian Government work with state and territory governments to implement a zero-tolerance approach to restrictive practice in a schools context..”

Further to this, the *Disability Services Act 2006* safeguards the rights of people with disabilities and includes a framework for disability service providers to improve the quality of life of people with disabilities- including ensuring the use of restrictive practices are highly regulated. The disability services framework involves comprehensive assessment, planning, application, approval and consent before utilising any form of restrictive practices. It could be argued that the DET is in part a service for people with disabilities (students), and should be subject to the same requirements as any other department or service working with people with disabilities. It is clear that irrespective of this, the department is clearly falling very short of duty or care.

The Disability Act 2006 specifies that it is not permitted to restrain or seclude any person with a disability, except if the behaviour a person shows is dangerous to themselves or others, and restraining or secluding is the least restrictive option. Within this context, any restrictive practices require relevant authority to be used.

The Disability Act 2006 requires any disability provider working with a person with disabilities to not only S. 150(2) (a) report to the Senior Practitioner of the use of other restrictive measures but also to S. 150(2)(b) (c) “..develop guidelines and standards in relation to the use of other restrictive interventions”. *The Disability Act 2006* also makes specific mention of recommending that the service provider establish clear guidelines and standards, including clinical guidelines and standards and involve evaluation, auditing, written directions, regulation and undertaking research in relation to restrictive practice.

The role of Senior Practitioner was appointed under the *Disability Services Act 2011* and exists to advise about the provision of disability services, how services can be improved and is afforded the power to investigate any concerns with respect to the treatment of people with disabilities. The Office of the Senior Practitioner expressly identifies that the *Victorian Charter of Human Rights and Responsibilities Act 2007* requires that “...any limit of a human right must be demonstrated to be justified and may only be subject to limits under law; in other words, any limitation of a human right must be specifically authorised by law.”; and as under *The Disability Act 2006* Section 58 (1) (e) and 58 (2), any restrictions on a person’s liberty must be subject to the meticulous standards outlined in *The Disability Act 2006* and as outlined earlier. Villamanta Disability Rights Legal Service (et al 2017) supports this in stating that “Students with disabilities should have the same legal protections from any type of physical violence as other members of the community do.”.

The EOHRC *Held Back* project points out that there is no independent oversight of restrictive practices within educational settings, yet “Adults using disability services enjoy the independent oversight of the Office of the Senior Practitioner when restrictive interventions are contemplated or used, yet children in our schools do not.”.

It is also of significant concern that teachers and aides receive inadequate training in disabilities and standards, let alone specialist training in restrictive practices.



**Bendigo Autistic Advocacy
and Support Service**

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

The Office of the Senior Practitioner expressly identifies that the *Victorian Charter of Human Rights and Responsibilities Act 2007* requires that "...any limit of a human right must be demonstrated to be justified and may only be subject to limits under law; in other words, any limitation of a human right must be specifically authorised by law."; and as under *The Disability Act 2006* Section 58 (1) (e) and 58 (2), any restrictions on a person's liberty must be subject to the meticulous standards outlined in *The Disability Act 2006* and as outlined earlier.

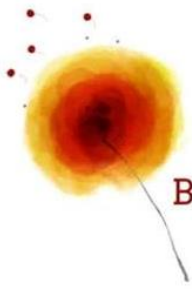
In addition, the Office of the Senior Practitioner (2010) *Practice Guide* details the requirements under *The Disability Act 2006*, Section 150 which refers to "other restrictive interventions". Other restrictive interventions are "...any restrictions on liberty other than restraint and seclusion.". And yet 'other restrictive measures' are some of the most commonly, openly utilized strategies within school classrooms. Not only is this not evidence-based or best practice but is deeply harmful for students subjected to these punitive measures that serve to erode self-esteem, humiliate, demotivate and violate human rights.

It is amongst recommendations by The Australian Law Reform Commission, *Review of Disability Standards for Education 2005* and the Victorian Auditor- General's audit report *Programs for Students with Special Learning Needs* that the use of restrictive practices in Victorian schools should be regulated via establishing an independent national preventative mechanism and amendments to the *Education and Training Reform Act 2006* and *Disability Act 2006* to transfer the regulation of restrictive practices within schools to the jurisdiction of the Office of the Senior Practitioner. As an immediate interim measure, the Commissioner recommended that the DET student restraint policy be amended to expressly state that "The use of seclusion in government schools is prohibited."

We also note the need for significant intervention within the DET and in relation to restrictive practices is acknowledged by Victoria Labor in the media release *Labor's special needs plan for Victorian schools* (2014) stating the need for "...more training for teachers.." and pledged "...as a condition of teacher registration with the Victorian Institute of Teaching, Labor will require all teachers to have completed a special needs component as part of their tertiary studies.". More importantly, Labor acknowledges and pledges that "...**the Senior Practitioner (Disability) will oversee the use of restraint and seclusion.**".

It is also concerning to note that as identified by Villamanta Disability Rights Legal Service (2017), Regulation 25 (currently 15) is proposed to be retained in an environment where schools continue to be grossly underfunded, understaffed and significantly undertrained and clearly unable to provide consistent nondiscriminatory services to students with disabilities.

Despite the rigorous controlled and regulated systems in place within any other sector of society- our most vulnerable members of our community- children with disabilities- are left unprotected. There is clearly overwhelming evidence supporting the removal of restrictive practices and detailing the harmful effects of same, and yet the DET submits to retain the use of restraint and restrictive practices without accountability or ramification. The DET's lack of prioritisation of child safety and wellbeing and quality outcomes is clear by the ongoing ambiguity and adequacy in guidelines and regulations.



Restrictive practices are in direct contravention to the above legislation and therefore should be completely abandoned.

Home schooling

Some of the most concerning aspects of the draft regulations pertains to *Part 6- Home Schooling, Division 1 – Application for registration for home schooling* in which 72 (2) requires that a student to be home schooled must **apply** to the Authority to register a student for homeschooling with the main causes for concern being:

72 (1) A parent of a child may **apply** to the Authority to register a child as a student for home schooling.

(2)(a) that registration required to be submitted by 30th November the year before the student is to commence home schooling and

(2)(b) **the child must remain enrolled at and must attend the school until receipt of approval** from the Authority

74 (2)(d) **that response from the Authority will be given within 28 days.**

It is incomprehensible as to why the DET would propose further restrictions on homeschooling children and families, given the DET's demonstrated inability to provide for the needs of many students. These restrictions effectively expect home schooling families to provide more than schools themselves are expected to provide. In fact, schools are not required to submit full learning plans for the following year and often refuse to provide further information regarding their child's learning.

Despite numerous reports recommending the implementation of 'Individual Learning Plans' for students with disabilities, the DET has no mandatory template or guidelines and indeed often fails to develop them.

We spend a lot of time and resource advocating for reasonable adjustments for our clients- autistic children often with co-occurring considerations and disabilities- as is legally required for schools to provide. Even when we negotiate and provide resources for reasonable adjustments, we are often required to return and or escalate complaints when these reasonable adjustments and plans are not adhered to. Despite numerous legislation requiring that schools provide all reasonable costs associated with curriculum and adjustments, it is our experience that many parents and advocates are in fact providing them.

Amongst the barriers we have experienced in advocating with children and families accessing education, attitudinal barriers and willful ignorance is arguably the dominant obstacle preventing these children from accessing what is a basic human right- education on the same basis as their peers.



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

It is our experience that many students are registered to homeschool after a long arduous and traumatic experience of fighting for reasonable adjustments within the school.

In our experience and as extensively documented within reports from (but not limited to) DHHS, VEOHRC and Victorian Auditor-General; children are often removed from school as a matter of urgency relating to profound distress and mental health deterioration at times characterized by reduced ability to function, self-harm and suicidality. These experiences are often secondary to trauma relating to bullying, discrimination (often by schools/staff/principals), and abuse.

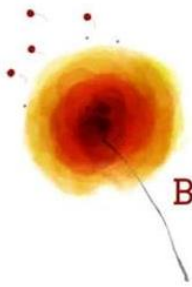
It is baffling as to why the RIS would acknowledge that home schooling parents choose this method of education for their children out of the child's best interests and that home schooling is associated with the same and even better outcomes than their schooled peers and yet seeks to restrict and impose undue hardship on those very families. The RIS contains much conflict between reality and the criteria proposed within the regulations. Further to this, it would be more appropriate to involve specialised staff to develop regulations on a specialised area. The regulations are problematic in the severe lack of understanding and knowledge on this form of education and the bias is very concerning. As the Home Education Network (2017) submits, "The staff at DET appear to have a poor understanding of Home Education or a very specific agenda on it. They attempt to cover their lack of knowledge and or agenda by reference to a very small sample of academic papers on the subject matter. They then dismiss these papers because they actually are supportive of home schooling in a way that does not suit the DET-VRQA."

To propose burdensome and detrimental restrictions upon home schooling children and families without an identified problem- as indeed one does not exist- is ludicrous. This is even more so for children and families effectively forced out of the education system secondary to abuse, unmanaged suffering and lack of inclusion.

The RIS is baseless in that it lacks a 'problem'. The fact is that home schooling is an effective, often superior mode of education than is available within schools, for many children. The fact is also that the regulations and requirements pertaining to the homeschool process are efficient and sufficient. The process for registration is in compliance with the *Education and Training Reform Act 2006* and provides for the commitment to and delivery of the curriculum as defined within the process. Home schooling families not only commit to educating their children, but by the very nature of homeschooling; can facilitate individualised and meaningful learning opportunities and outcomes.

As explained by the Home Education Network (2017):

There is a wealth of research from all over the world, where home schooling occurs, that home schooled children perform just as well, if not better than their institutionally educated peers. In fact, there are many areas of concern in educational institutions such as bullying and or abuse, inability to cater to individual learning needs whether or not it is due to the vast array of special needs found in the modern classroom, lack of resources, over crowding in classrooms resulting in poor student-teacher ratios which further exacerbates many of these other issues not to mention the inherent inertia of the institutional education system in dealing with the need to make changes in overall



curriculum.”

The ambiguity of these regulations imply scope for the VRQA to not only refuse applications but to enforce extensive waiting periods during which time a profoundly suffering child must remain enrolled in and attend the very environment causing them harm-school. This in itself is unlawful and not within the scope of the DET as according to The *Education and Training Reform Act 2006* which protects child and parent fundamental human rights in choosing the appropriate education for their child. The *Education and Training Reform Act 2006* states:

- 1.2.1(b)** all Victorians, irrespective of the education and training institution they attend, where they live or their social or economic status, should have access to a high quality education that—
- (i) realises their learning potential and maximises their education and training achievement;
 - (ii) promotes enthusiasm for lifelong learning;
 - (d) parents have the right to choose an appropriate education for their child;

The *Review of Disability Standards for Education 2005* (Department of Education, Employment and Workplace Relations (DEEWR) in collaboration with the Attorney-General’s Department (AGD): 2012) found that many students experience ongoing bullying, discrimination and violation of human rights within schools. The Review reported that many submissions indicated that “..ongoing discrimination and a lack of awareness across all areas on education continues to be an extremely significant area of concern for students with disability and their families.”.

To deny parents the right to homeschool and in the timeframe deemed appropriate by parents, is to violate numerous international and local human rights and legislation. In addition to this, to place the authority to make this decision solely into the hands of any other person- particularly within schools- is highly negligent and inappropriate. This will serve to further vilify and traumatise students and their families.

It is a fundamental right of parents to choose education appropriate to individual needs as according to the *Education Training and Reform Act 2006*, the *UN Charter of Human Rights* Article 26 (3) which states that that “**Parents have a prior right to choose the kind of education that shall be given to their children.**”, and the *Victorian Charter of Human Rights and Responsibilities Act 2006* Section 10(a)(b), Section 17(1)(2) in declaring children’s rights to be protected by the State from degrading punishment and discrimination.

That many children are at risk of harm and poor education within schools is undeniably clear; as reported by the Equal Opportunity and Human Rights Commission’s (EOHRC) research project *Held Back. The experiences of students with disabilities in Victorian schools* (2012). The project was undertaken in response to concerns expressed by parents, advocates and community members that “..for students with disabilities accessing a good education and achieving good learning outcomes was a lottery rather than a certainty.”. The EOHRC reports that:

Parents and teachers told us of the commitment they bring to ensuring students gain access to the best possible educational opportunities. But they also told us of the attitudes that held children back. These include, inflexible policies which they feel deny students the opportunity to achieve, persistent experiences of bullying, the difference a committed school principal can make, and the lack of appropriate training for teachers,



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

both at university and after qualifying, to make sure they could provide the best possible support to students.

Villamanta Disability Rights Legal Service (et al 2017) also recognises that failure of schools for many disabled students in advised that numerous advocacy organisations receive a high number of complaints and requests for assistance relating to the DET. For example, Communication Rights Australia finds that 65% of complaints received relate to access to education. Of complaints received annually by the Disability Discrimination Legal Service; “..the Department of Education and Training is the single most common Respondent.”.

The EOHR (2012) also reports that the Commission receives a significant number of complaints about disability discrimination in education and that “..several parents, advocacy groups and members of the Commission’s Disability Reference Group approached the Commission to raise concerns about the experiences of students with disabilities in schools. This included concerns about students **being pushed into part-time attendance or homeschooling;..**”

The *Review of Disability Standards for Education 2005* (Department of Education, Employment and Workplace Relations (DEEWR) in collaboration with the Attorney-General’s Department (AGD): 2012) found that:

In spite of the intent of the Standards, some reported that ongoing discrimination and a lack of awareness across all areas on education continues to be an extremely significant area of concern for students with disability and their families. Many families reported that, through their education experiences, their children are subjected to: limited opportunities; low expectations; exclusion; bullying; discrimination; assault and violation of human rights.

Subjecting students to unnecessary waiting periods and preventing immediate removal from school with the view to home school is unlawful as according to the *Disability Standards for Education 2005* which upholds the rights of students with disabilities to learn “..in an environment free from discrimination caused by harassment or victimisation on the basis of their disability.” (Part 8.2) and the *Disability Discrimination Act 1992* Sect. 22 that stipulates students with disabilities are entitled to an education on the same basis as their peers. The Disability Discrimination Act 1992 Sect. 22(1) states that it is “..unlawful for an educational authority to discriminate against a person on the ground of a person’s disability:

(a) “by refusing to accept the person’s application for admission as a student; or”

of which home school registration is, and-

(b) “in the terms or conditions on which it is prepared to admit the person as a student.”
of which refusal or arbitrary restrictions governing home schooling clearly deny.



Bendigo Autistic Advocacy and Support Service

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

It is abundantly clear that in many situations, the school system is broken and failing students. It is well documented and established that many students suffer profoundly within the school system, and that to restrict home schooling and require an application process is to be unlawful and detrimental to children and their families.

Villamanta Disability Rights Legal Service (et al 2017) further adds that “It is ironic that some of the proposed requirements, such as individual education planning, involve the very same areas that statutory authorities have found need urgent attention from the Department itself.”

Julie Phillips (2017) asserts that due to the current state of the education system and experiences of students with disabilities, “the Victorian school system presents educational, physical and psychological risk to students with disabilities.”

The RIS clearly acknowledges that “**Parents have the right to choose an appropriate education for their child.**” (p7), which is a right enforced by the

- *Education Regulations and Training Act 2006*
- The *UN Charter of Human Rights* Article 26. defines the rights to education, specifically:
 - (1) Everyone has the right to education.
 - (2) **Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.**
 - (3) **Parents have a prior right to choose the kind of education that shall be given to their children.**

and yet seeks to restrict parental and child rights in this regard.

The currently proposed draft regulations *Part 6- Division 1*, subdivision 72 and 74 is in also in opposition to the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention against Discrimination in Education*, Article 1 (a) and (d) which forbid actions limiting access and “**depriving any person...access to education of any type or level prohibits “inflicting on any person..conditions which are incompatible with the dignity of man.”**” The draft regulations Part 6, Division 1, Subdivision 72 and 74 clearly breach these.

The UNESCO *Convention against Discrimination in Education* articulates the absolute and essential right of parents in determining the right format and environment for their child/ren’s education in Article 5 (b) which states:

“It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions;..”

The RIS in itself is invalid and does not comply with the requirements as set out by the Commissioner for Better Regulations guide *Victorian Guide to Regulation: A handbook for policy- makers in Victoria* (2016) in the lack of a defined ‘problem’, inadequate consultation and lack of relevant or quality evidence and data.

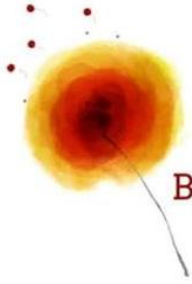


The proposed process outlined in the draft regulations is ambiguous and open to interpretation, allowing the VRQA inappropriate and unethical power and scope to further restrict homeschooling. This is of particular concern given the experiences of many children before registering for home schooling but also in that the DET and VRQA have demonstrated a clear bias against alternative education methodologies..

Further to this, the draft regulations, by DET’s own admission- reduces scope of learning styles and delivery therein contravening student and family rights under the *Education Training and Reform Act 2006*, in which affords students the right to homeschool and education based on individual needs.

In relation to home schooling, the draft regulations and RIS are unacceptable and inappropriate in that they (this is not an exhaustive list):

Identified problem	Impact	Which Violates:
Lack a defined “problem” Lack of data Lack of evidence	*Inaccurate, baseless proposal	* <i>Victorian Guide to Regulation: A handbook for policy- makers in Victoria</i> , Commissioner for Better Regulation 2016
Lack of relevant consultation	*Biased, unrealistic, misguided information as basis Lack of data	* <i>Victorian Guide to Regulation: A handbook for policy- makers in Victoria</i> , Commissioner for Better Regulation 2016
Proposed increased arbitrary restrictions such as learning plans, registration ‘approval’ waiting periods	*Erosion of individual and family rights *Unreasonable expectations and stress on families, monopolizing resources better utilized for home schooling- such as finances, time, wellbeing *Placing further pressure and harm on suffering children and their families *Overreach the scope of reasonable power of the VRQA	* <i>Victorian Guide to Regulation: A handbook for policy- makers in Victoria</i> , Commissioner for Better Regulation 2016 * <i>Victorian Charter or Human Rights</i> * <i>Disability Discrimination Act</i> * <i>Human Rights Act 2004</i> <i>Equal Opportunity Act 2010</i> * <i>International Standards-Universal Declaration of Human Rights</i> United Nations Human Rights, Office of the High Commissioner n.d. * <i>Child Safe Standards Department of Health and Human Services</i> * <i>Charter of Human Rights</i> United Nations Article 5, Article 25(1) * <i>International Standards-Universal Declaration of Human Rights</i> United Nations Human Rights
Ambiguity of regulations	*Overreach the scope of reasonable power of the VRQA and DET *Gives DET and VRQA scope to impose further harmful restrictions with undefined unreasonable timelines Enables VRQA unreasonable scope to enforce Enables VRQA to refuse registration Enables VRQA to intrude on	* <i>Education Training and Reform Act 2006</i> * <i>DET guidelines</i> * <i>Subordinate Legislation Act 1994</i> * <i>Charter of Human Rights</i> United Nations

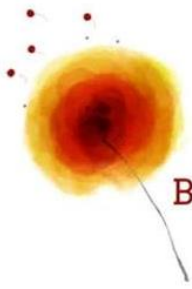


	rights of privacy	
RIS Option 3-Proposed home visits	*Violates human rights protected by law *Violates human right to privacy *Intrusive *Discriminatory against students with different needs	* <i>Education Training and Reform Act 2006</i> * <i>UN Convention on the Rights of the Child Article 16</i>

Recommendations

It is our recommendation that:

1. That the safety and wellbeing of children be considered first and foremost with no agendas.
And to this end:
2. Regulation 25 (currently 15) be removed completely and the DET work collaboratively with relevant stakeholders to implement reasonable practices and regulations
3. That there be no change to homeschooling regulations, particularly whilst many homeschooling families do so as a result of DET negligence and children consequently suffering profoundly
 - a. That there be more supportive mechanisms provided to enhance the experience of home schooling children and families as supportive measures as opposed to restrictive, controlling measures.
 - b. That there be extensive, relevant stakeholder involvement in the development of home schooling regulations, as is befitting a specialised area of education



Reference List

Bendigo Autistic Advocacy and Support Service Presentation- Parliament Inquiry into Services for Autistic Persons (2016)

Commissioner for Better Regulation 2016, *Victorian Guide to Regulation: A handbook for policy- makers in Victoria*, viewed 29th January 2017, <http://www.betterregulation.vic.gov.au/Guidance-and-Resources>

Crimes Act 1958, viewed 29th January 2017, http://www.austlii.edu.au/au/legis/vic/consol_act/ca195882/s31.html

Department of Health and Human Services, *Senior Practitioner*, http://www.dhhs.tas.gov.au/disability/senior_practitioner, viewed 28th February 2017

Hastings E 1996, Disability Discrimination Commissioner, Australian Human Rights Commission, *Access to education for students with a disability: barriers and difficulties*, viewed 18th February 2017, <https://www.humanrights.gov.au/publications/access-education-students-disability-barriers-and-difficulties>

Home Education Network, 2017, *SUBMISSION: Draft Education and Training Reform Regulation 2017*

Office of Public Advocate n.d., *Resources- Restrictive Practices*, viewed 5th February 2017, http://www.opa.sa.gov.au/resources/restrictive_practices

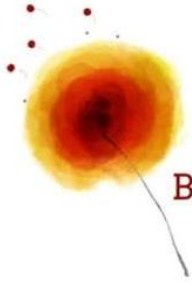
Parliament of Australia, 2015, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect, Viewed 12th January 2017.

Phillips J, 2017, Disability Advocate, Review of Education and Training Reform Regulations.

Victorian Auditor-General's Report 2012, *Programs for Students with Special Learning Needs*, viewed 12th February 2017, <http://www.audit.vic.gov.au/publications/20120829-Special-Learning-Need/20120829-Special-Learning-Need.pdf>

Villamanta Disability Rights Legal Service, Communication Rights Australia, Disability Discrimination Legal Service, 2017, *Submission to the Department Of Education and Training- Review of the Education and Training Reform Regulations* 16 February 2017

Victorian Equal Opportunity and Human Rights Commission 2012, *Held Back. The experiences of students with disabilities in Victorian schools*, viewed 12th January 2017, http://www.humanrightscommission.vic.gov.au/media/k2/attachments/1404-VEOHRC_HeldBack_-_StudentwithDisabilityReportW3.pdf



**Bendigo Autistic Advocacy
and Support Service**

Co-Convenors
Beck Kelly - Sarah Hansford
Tony Langdon - Susanna Flanagan

Victorian Labor 2014, *Labor's special needs plan for Victorian schools*, viewed 20th February 2017,
<https://www.viclabor.com.au/media-releases/labors-special-needs-plan-for-victorian-schools/>

Victorian Charter of Human Rights and Responsibilities Act 2006. viewed 12th January 2017,
[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/54D73763EF9DCA36CA2571B6002428B0/\\$FILE/06-043a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/54D73763EF9DCA36CA2571B6002428B0/$FILE/06-043a.pdf)

Victorian Equal Opportunity and Human Rights Commission 2012, *Held Back. The experiences of students with disabilities in Victorian schools*, viewed 12th January 2017,
http://www.humanrightscommission.vic.gov.au/media/k2/attachments/1404-VEOHRC_HeldBack_-_StudentwithDisabilityReportW3.pdf