

Standing Committee on Education, Training and Youth Affairs,
Legislative Assembly for the Australian Capital Territory,
GPO Box 1020,
Canberra, ACT 2601
committees@parliament.act.gov.au

Dear Member of the Standing Committee on Education, Training and Youth Affairs,

Subject: **Inquiry into the needs of act students with a disability**

I am disappointed that the recent *Review of Special Education in the ACT*¹ gives credence to the following.

"I am sure it's much easier for the school to put all the hard cases in a corner, but it is not to the children's best interests. It's disheartening to see how children who used to be with my son (in special class) and not so different from him, are now far behind and excluded."(Parent)

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This shows clearly that appreciation of difference and diversity, the foundation of Inclusion ideology, remains elusive even for zealous proponents of Inclusion policy. Apparently, both the authors of the report and the parent of a child with a disability have not discovered the folly of judging other children, their schools, teachers, parents, etc. like this; or even learn that different children experience different outcomes. It is disheartening that the authors of the report do not recognise that while young children seem "not so different", their "difference" increases as the children get older.

Notice how these Inclusion zealots demeans those who do not *see the light*, those who left their children in special education where they "are now far behind and excluded": dismissing the efforts of Inclusion non-believers as putting "all the hard cases in a corner" and judging the expertise of a school and its teachers along with other parents' decisions of as "not to the children's best interests". Such judgmental fervour has no place, and certainly no place in a formal report on "special education".

Please do not conclude that I completely oppose Inclusion and Inclusive Practice in education ... and more generally.

I applaud the achievements of Inclusive Education when/where it is effective. Many people with a disability have benefited (and will benefit in future) from inclusion in mainstream education and from desegregation generally. However, the evidence indicates to me that Inclusion is merely one of a number of useful approaches to educating students with a disability.

I find most of Shaddock's Report reads like a "more of the same" strategy ...

- "Government and education policy in the ACT supports inclusive practice" (page 15) and "improvements in educational services for students with a disability in the ACT are most likely to occur in educational contexts that

¹ See http://www.det.act.gov.au/_data/assets/pdf_file/0014/105341/Review_of_Special_Education_ACT_2009_Final_Report.pdf

address the interests of all – students (with and without a disability), parents/carers, staff and school communities” (page 18)

- “the *most important* contribution that schools can make to improve the educational outcomes of students with a disability in ACT schools is to improve what happens on a daily basis in individual classrooms” (page 15)
- “to ensure skilled and informed leadership at system and school level” (page 15)

Students with disabilities need their whole education improved, not just inclusive practice. Essential improvements for many students include significantly better services provided in segregated settings, such as clinical services. This is a long-standing issue in the ACT.

4.61. The committee recommends that the Government review the mode of delivery of therapy services to students with disabilities.

Standing Committee on Education, Community Services and Recreation (December 1999), *Educational Services for Students with a Disability*, Report No 3. See <http://www.parliament.act.gov.au/downloads/reports/E03studentswithadisability.pdf>

It is clear to parents that the leadership in many schools simply do not have the knowledge and skills needed to supervise education that includes students with significant clinical (especially behavioural) challenges. Schools need specialist professional support to realise required outcomes.

Options listed in Shaddock’s Report that might facilitate improvement are ...

- “increased accountability for the learning outcomes of students with a disability” (page 16)
- “the adoption of evidence-based policy to inform service development” (page 16)
- “more effective and efficient involvement of Learning Support Assistants (LSAs)” (page 17)
- “the involvement of supervised paraprofessionals in the delivery of school-based therapy” (page 17)
- Better support for students with a disability in Catholic and Independent schools.

I expect every student with a disability benefits from a level of inclusion. But it does not follow that every student benefits from “full inclusion” or that every student should be included all the time, as the most zealous proponents of Inclusion would have us believe.

Inclusion in a community is not “all or nothing”. There are degrees of inclusion and most (maybe all) people need segregation at different times and to different degrees. I know that there are times when I want to be alone and other times when I want to be among a select group of people. Like most people, I prefer to perform my ablutions in a segregated situation. I practice music (a learning activity) on my own, as I preferring to not subject others to the fractured and repetitive noise that it involves.

People are not entirely inclusive by nature. We choose at times to separate into distinct population subgroup: for example, we all use different accents when we speak. We have different cultures. While many of us celebrate cultural diversity, we can be confused by the finer points; for example, few of us would include bush ballads or country music cultures in a multi-cultural event.

In education, students have different needs. For example, students who speak English at home generally do not need lessons in basic spoken English at school. But some students have the particular need to be taught English so they can access the broader education system. It is not appropriate for students who have sufficient

English as a first language to sit through introductory lessons in English. It is, however, entirely reasonable for a teacher to explain specialised terminology and language in detail as students generally benefit from better understanding.

Note that while inclusion zealots regard such practices as examples of the benefits of Inclusion or Inclusive practice, this is an example of Inclusive practice coinciding with pre-existing good teaching practice.

Schools practice segregation routinely.

Schools segregate students into classes. The basis for this segregation varies between schools and shows enormous diversity. Yet while many schools espouse inclusivity, I have never seen a school seek to extend inclusivity to all its students (should they so wish, they could do so through grouping students for maximum diversity). Only students with *special needs* are given an Inclusion experience.

It can be appropriate to segregate gifted students (another group with special needs) at times.

At times, Inclusion practice segregates students. In the ACT, schools exclude many students with a disability from (or at least actively discourage them from participation in) national benchmark testing.

Inclusive practice mostly involves age-peers. Inclusive practice is not with developmental peers for students with developmental delay. In the teen years, many developmentally normal students struggle with their own inclusion. Teenage students with developmental delay may be better off being included with adults, who are the social group they will integrate with for the rest of their life. But Inclusion ideology opposes/prevents testing such an hypothesis.

Unless there is no alternative, there is little value in placing a student in a class where the student understands little of what is going on; nor is it appropriate to teach most of the time to a student whose learning is years behind the rest of the class. In such circumstances, the *full inclusion* approach denies at least one student access to appropriate education.

I suggest, the available evidence indicates teaching students in both segregated and inclusive (desegregated) settings based on individual student needs. What little evidence is available needs to be viewed without the blinkers of Inclusion ideology.

Our education system must put students ahead of ideology. I encourage everyone to question the use of segregation wherever they encounter it, and especially in education settings. But I also want education and learning provided in settings with varying degrees of segregation, that are chosen freely depending on the needs of the student — free from *unintended consequences* due to zealous pursuit of ideologies of Government, Department, school and teacher (and with consent from parents).

In relation to the *Student Centred Appraisal of Need* (SCAN) process, Shaddock's reports says

Dissatisfaction with the outcomes from the *Student Centred Appraisal of Need* is fuelled by what appears to be a widespread misunderstanding that the process is designed to deliver all of the resources to support the learning of a student with a disability in mainstream schools.

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The SCAN process was designed to be misunderstood: it was created to preserve an existing and arbitrary allocation of special education funds and resources. The SCAN process was always designed to be opaque ... based on secret formula, non-disclosure of funding and unaccountability.

Shaddock's Report attributes the SCAN process with "the increased transparency in the allocation of resources" (page 93) without showing a basis for such a glowing assessment.

The Shaddock Report describes

Individual Learning Plans (ILPs) in the ACT Department of Education and Training schools are an adaptation of the general model of Individualised Education Plans (IEPs) that have been a part of special education for over 30 years. They were mandated in USA legislation to bring structure, relevance, coordination and accountability into service delivery for individuals with a disability. ILPs are mandatory for specified students in ACT public schools.

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The report does not discuss the nature of and basis for the "adaptation" of IEPs to ILPs. Is there any supporting evidence for such an "adaptation"? The Report cites numerous IEP-related references but does not show that IEP-related material is relevant to the ILP process.

My experience is that most teachers and school staff in the ACT lack skills in writing and using ILPs in the education of students with a disability. Even experienced teachers in special schools have difficulty developing, using and maintaining ILPs for their students.

The following focuses on students with autism spectrum disorders (ASD), a particular and significant subgroup of students.

ACT Government needs to recognise that people with ASD are a distinct group with distinct needs. Too often, students with disabilities are treated as a homogenous group and crucial needs of students with ASD are ignored.

For a long time, "autism" was considered a rare disorder with a particularly poor prognosis. Often "autism" was linked with *Mental Retardation* (both were on Axis II in the DSM-III) and considered untreatable.

Since the 1980s, views on the prognosis for people with ASD have been changing. Some jurisdictions recognise that appropriate early intervention² improves the prognosis substantially for an overwhelming majority of those diagnosed with ASD (Pervasive Developmental Disorders are on Axis I in the DSM-IV). There is an ever expanding body of evidence supporting this conclusion.

No longer is ASD a rare disorder. Recently, reports both in the USA and in Australia have shown the number of students diagnosed with ASD exceeds 1% of the over 8 year old student body. In the UK, ASD prevalence has been reported above 1% of students for some time and a recent report indicates 1% of the adult population have ASD but most adults have not been diagnosed.

Some people expect people with ASD can realise better outcomes primarily through education ... though the series of comprehensive reviews of the research literature have not revealed an evidence base for such an expectation.

Unfortunately, Profession Shaddock's *Review of Special Education in the ACT* does not recognise the distinct needs of students with ASD. As is often the case, his Report appears to assume that what is good for students with other disabilities will be good for students with ASD. There is a growing body of evidence contrary to this conclusion.

² ... which is only available for a few families in the ACT who can afford to pay themselves for best practice early intervention.

The Summary of the Report says ...

Government and education policy in the ACT supports inclusive practice, and in this context, the report urges schools and school systems to work simultaneously towards two related objectives: a) to provide the adjustments that many students with a disability need in order to participate in education on the same basis as other students; and b) to adapt mainstream practices so that adjustments for individual students (whether they have a disability or not) become less necessary.

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The report does not recognise that some students with ASD simply cannot “participate in education on the same basis as other students”. The expectation that students with ASD will participate as suggested fails to recognise and respect the nature of their “difference”.

There is value in providing “adjustments” and adapting “mainstream practices”. These strategies can at times overcome a barrier in a student’s learning but these strategies are not sufficient when a student will need skills for independent living and to function in a wider community that simply do not adjust as readily as a school. These strategies do not meet students’ needs to learn to function as best they can as adults in the wider community.

The Report does not recognise that students with ASD need to be taught skills explicitly that other students either just pick up or learn readily. ASD-specific elements of an individual education require substantial additions to curriculum and use of specific pedagogy. It is not sufficient to prioritise “the development of capacity of teachers to teach all students” (page 15). The approach suggested in The Report does not recognise that students with ASD have significant specific needs in both curriculum and pedagogy.

The Shaddock Report’s Summary says ...

This general strategy [inclusive practice] ... reinforces the view that students with disabilities are, fundamentally, *students* first. Therefore ... educational services and policies should be universally designed and inclusive of the needs of students with a disability along with those of all other students. A major conclusion is that ‘special’ and ‘regular’ education should be increasingly integrated in terms of pedagogy, curriculum and resourcing. This ‘universal design’ approach *is* leading practice and should pervade policy, planning and delivery.

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It is dishonest to suggest that students will ever come first. Parents know government finances come first. Any suggestion that students could or should come first, ahead of financial considerations, is simply not credible. This suggestion damages the credibility of the entire report.

Experience is that *inclusion ideology* comes ahead of students. Of course true believers assert/assume that having *inclusion ideology* and inclusive practice ahead of students is best for students. But their view is not supported by evidence.

The body of the Shaddock Report says ...

There has been extensive investigation over many years of the efficacy of programs that withdraw students and/or teach them in separate programs (Kavale & Forness, 1980; Wang & Baker, 1985/86; Canadian Council on Learning, 2009). This research has found that, by and large, the ‘average’ student with a disability would be marginally better off (in terms of a range of learning and social outcomes) if educated in the mainstream.

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The Report describes their reasoning ...

Important caveats to these muted conclusions are that the available body of research is patchy; that effects in favour of inclusive practice are small; and that the results are not uniform. Therefore, a conservative interpretation is that “inclusive settings appear not to academically disadvantage most students with special educational needs. In most cases they appear to offer an advantage over separate settings” (Canadian Council on Learning, 2009 p.5).
pages 83-4

But other conclusions or “conservative interpretations” can be reached from the same information. The Report from the Canadian Council on Learning, cited several times in the Shaddock Report, comes to a different “conservative” conclusion ... that is not reported in the Shaddock Report.

Considering the best program placement for the child/ Offering a range of services

Few studies reported academic benefits to separating SEN students from the general population. However, the majority showed only small and/or statistically non-significant advantages to inclusive classrooms. As the academic education of children cannot be separated from their social well-being, if students with special educational needs are more comfortable and confident in separate settings—as, for example, may be the case for hearing-impaired, learning-disabled, and some emotionally disturbed students—educators and decision-makers will have to proceed carefully, as the benefits of inclusion are not overwhelming.

Furthermore, some special needs may be more conducive to inclusion than others. Boards and schools may do well to ensure a range of services are available to support students with differing needs.

and

Lessons in learning

All else equal, inclusive settings appear not to academically disadvantage most students with special educational needs (SEN). In many cases they appear to offer an advantage over separate settings.

The balance of evidence shows favourable academic outcomes for students with SEN educated in inclusive settings. However, these results are not homogenous and effects are generally small in magnitude. These two caveats suggest that while inclusive settings are generally preferable, factors other than classroom setting (instructional quality is the most immediately obvious factor) are probably more important determinants of SEN students' academic success.

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There is no recognition, adjustment or allowance made in either the Canadian Report or the Shaddock Report, for the damage to “instructional quality” in segregated settings of a decade or more of Inclusive Education policy. During this time many better or aspiring teachers avoided special education rather than risk damaging their career by spending time in (appearing to support) any non-Inclusive setting. In circumstances where “instructional quality is the most immediately obvious factor”, it is remarkable despite the negative social pressure that “effects [of inclusion] are generally small in magnitude”; and that “separate settings” have not experienced measurably degraded “instructional quality”. That “these results are not homogenous” has serious consequences for students with ASD. The resilience of special education (under siege from Inclusion ideology) should be recognised and appreciated ... but that would just not be *politically correct*.

While Shaddock's Report says “this ‘universal design’ approach *is* leading practice”, inclusive practice does not have a significant lead and its advantage could be due

largely to fashion. The Report's conclusion, "that 'special' and 'regular' education should be increasingly integrated in terms of pedagogy, curriculum and resourcing", is not justified.

The distinct challenges relating to students with ASD should be well known to the authors of the Report. Baroness Warnock, one of the architects of *Inclusive Education*, famously alienated increasingly zealous *Inclusionists* when she challenged their vision of *full inclusion* as the ultimate panacea for special education in her controversial pamphlet (which is listed in the Report's reference list) ...

Warnock, M. (2005). *Impact. Special educational needs: A new look*. Great Britain: Philosophy of Education Society of Great Britain.

The English House of Commons appointed the Education and Skills Committee to examine the expenditure, administration and policy of the Department for Education and Skills and its associated public bodies. Baroness Warnock said in evidence ...

Q9 ...

... we have all got into the way of thinking that special educational needs is a single category of children and if some children with special needs, by adapting the school and bringing teachers in, can flourish in a mainstream school, then all children who have SEN will be the same, but that is particularly not the case ... about autistic children.

House of Commons Education and Skills Committee, *Special Educational Needs: Third Report of Session 2005–06, Volume II, Oral and written evidence*, 21 June 2006, page EV3; see <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeduski/478/478ii.pdf>.

Note: Vol. I is among the References in the Shaddock Report but it is not cited.

The published *Oral and written evidence* shows clearly that Inclusive practices in the education system in England are not always appropriate for students with ASD. There are no indications that the situation for students with ASD is different in the ACT.

There are numerous challenges and opportunities for improving education practice for students with ASD.

First, the needs of the student should come ahead of Inclusion ideology.

Many students with ASD need specialist teachers with ASD-specific knowledge ... and supervision and support from specialist clinicians. ASD is a severe and pervasive clinical condition. Teachers cannot be expected to have the clinical knowledge, skill and experience required to ensure students with autism spectrum disorders learn effectively.

Students with ASD need their education available in a range of settings. Some students with ASD need to be taught in intensive ASD-specific settings. Other students with ASD need to practice skills in settings with varying degrees of "inclusive". And some students with ASD need to be included with appropriate support in mainstream settings. Some students with ASD are best served where they can move between these settings within a school day or over a more extended period of time.

Shaddock's Report skims over other adverse experiences that are more likely for students with ASD in mainstream settings. It says ...

"... when a student with autism follows a teacher's direction ... literally – this behaviour might be punished because it disrupted the class. In this connection, AWARES, (2009, p.3) reports that, "27% of autistic children have been excluded at some point and that most of those – 23% - have been excluded more than once".

Punishing a student with ASD for following a teacher's instruction literally can be devastating for a student with ASD. For the school, this can easily occur in the playground when a student with ASD encounters a teacher with little or no knowledge or understanding of the student. Typically, the student is chastised, ridiculed and humiliated. Their fragile confidence and self-esteem are shattered. For some students, such an experience damages them for life. They are left broken, depressed and chronically anxious.

In the ACT, schools exclude students for up to 5 days with the full support of the law. The Government and the Opposition want legislation that allows schools to exclude students in these circumstances for 10 or 20 days respectively.

I did not find the AWARES reference cited in The Report.

I am aware of students with ASD in the ACT who were excluded from school because there is insufficient support for them to attend school on a full-time basis.

The Report does not recognise this difficulty for children with ASD. After the quote above, it returns immediately to "whole-school approaches". This *Inclusive Practice* may get schools to reduce exclusions for other students and thereby hiding exclusions of students with ASD in the larger statistics.

Bullying is a chronic problem for students with ASD. The Report says ...

Students with autism experience 400% more bullying than other students and Bottroff (2009) reports that when schools' anti-bullying policy ensures that these students have a positive relationships with their teacher, one or two friends, and a buddy who supports them, that they experience significantly less bullying.

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The report is unclear on what "significantly less bullying" means. If *significantly* is used here in a statistical sense then "significantly less bullying" could mean very little improvement. Even if bullying were halved, students with autism would still suffer at twice the rate of other students.

This Report presents a positive picture about bullying that is not matched by reality. Despite opportunities for substantially better outcomes, recent reports show little is being achieved. An Australian study published in June 2009 says ...

The study, led by ECU's Professor Donna Cross, ... found that covert bullying is a fairly common experience among Australian secondary school students, with one in six students (16 per cent) reporting that they were bullied covertly every few weeks or more often in the past term and up to 10 per cent reporting they bully others covertly.

Researchers also found that covert bullying has the potential to result in more severe psychological, social and mental health harm than overt bullying, and also has the capacity to inflict social isolation.

According to Professor Cross, covert bullying by its very nature often goes unnoticed by adults and school staff, and it is becoming clear that students are less likely to report it.

"Many schools have clear, standard policies for staff to follow in cases of overt bullying, but not covert bullying," she says.

See http://www.ecu.edu.au/pr/mediareleases_show.php?release=0000000911

Bottroff told an autism conference that 100% of students with ASD in mainstream schools are bullied. Many students with ASD and their parents have stories of schools

ignoring and dismissing their complaints about bullying ... or punishing the victim. The grassroots experiences are disappointing and they are consistent with outcomes described in these studies.

Shaddock's Report does not discuss the consequences of bullying for students with ASD. It glosses over the long-term effect of bullying on learning, self-esteem, stress, mental health, employment, etc. The outcomes for this aspect of inclusive practice are ugly.

Recent reports in the popular media³ indicate that bullying is a bigger problem than authorities previously recognised. It is bigger problem than Shaddock's Report acknowledges.

Students with special needs and students with a disability are not heterogeneous groups. Special needs are individual. Outcomes should be assessed individually rather than collectively.

The needs of individuals are recognised in major policies overseas like "no child left behind" in the USA and "every child matters" in England. These policies show a significant shift in thinking that can benefit many students with a disability. They say that it is not good enough to support a majority of students whose needs are cheapest or easiest to meet.

In the ACT, the Education Department accepted recommendations to create ASD-specific Learning Support Units in mainstream schools in the late 1990s. These Units help schools trying to meet the needs of students with ASD who need time in a segregated setting, with a specialist ASD teacher as well as the chance to learn in a mainstream setting.

These Units suffer the usual bureaucratic service model: were bureaucrats withdraw resources until the service no longer works ... at which point they deem the service ineffective and disband it as quickly as possible. The original recommendation was for ASD-specific Learning Support Units with 4 students. The number of students was immediately increased to 6 students per Unit; and more recently created Units have 8 students⁴.

At one stage, the cost of places in Learning Support Units was reported in Annual Reports.

The cost of special education is given in ACT DET Annual Reports:

³ See <http://sunrisefamily.com.au/current/petition/>, <http://www.wesleymission.org.au/Releases/091120.asp> and http://www.wesleymission.org.au/News/Research/Kids/chrome-images/No-one_deserves_to_be_left_out.pdf

⁴ The AEU also expressed concern over this issue ... see <http://www.aeuact.asn.au/info-centre/documents/SpecialEducationsubmissionfinal15Feb08.doc>

	2000-1	2001-5 ⁵	2005-6 ⁶	2006-7 ⁷	2007-8 ⁸	2008-9 ⁹
Average cost per public special school student in special schools	\$38,508	Not found	\$48,387	\$49,991	\$53 483	\$54 861
Average cost per special education student in LSUs.	Not found					
Average cost per public special education student in mainstream schools.	\$18,312	Not found	\$21,406	\$21,576	\$22 005	\$22 979
Average cost per child attending an early intervention unit	\$3,320	Not found				

On this basis, cynics might see Government's Inclusion Policy and Inclusive Education as cost saving measures compared to special education.

Like many in the education sector, the authors of Shaddock's Report are surprisingly naive about the law. Apparently, they are too easily impressed.

Education for students with a disability in the ACT is underpinned by impressive legislation.

Shaddock Report, page 34.

Surprisingly, Shaddock's Report omits the ACT *Disability Services Act 1991* from its list of relevant legal instruments.

The authors of the report may be too easily impressed. The reality is that attempts to protect the education of children with disabilities using legal processes show those processes are an abysmal failure. Experience shows

- complaints relating to education services take 6 to 10 years to process;
- decisions relating to discrimination law are inconsistent; and
- no prospect of a decision that is favourable for a student.

The unreasonably extended delays in the ACT's legal procedures clearly breach basic Human Right. There is no prospect that a student would actually benefit from legal processes that takes so long. The lengthy delay means that any decision favouring a student would come too late to make a difference for that student.

The ACT Discrimination Tribunal breached the Human Rights of two ACT students with Autistic Disorder but the ACT Human Rights law does not offer these students a complaint process. Clearly, the ACT Human Rights law is seriously inadequate.

At the start of the Woodbury matter¹⁰, the Government asked that the complaint be *struck out* under Section 27 of the ACT Discrimination Act. The Discrimination Tribunal ruled that Section 27 did not apply in this matter. However, in his final

⁵ See http://www.det.act.gov.au/data/assets/pdf_file/0016/18241/DETAnnualReport04_05.pdf.

⁶ See http://www.det.act.gov.au/data/assets/pdf_file/0016/18232/DET_Annual_Report_2006sm.pdf, page 167 (PDF page number).

⁷ See http://www.det.act.gov.au/data/assets/pdf_file/0015/18222/DETAnnualReport2006-07.pdf, page 118.

⁸ See http://www.det.act.gov.au/data/assets/pdf_file/0005/33188/DET_Annual_Report_2007-08.pdf, page 99.

⁹ See http://www.det.act.gov.au/data/assets/pdf_file/0011/88274/DET_Annual_Report_2008-2009.pdf, page 109

¹⁰ See <http://www.courts.act.gov.au/magistrates/tribunals/dt/decisions/woodbury.htm>

decision, the Tribunal President had a complete turn-around and declared that Section 27 protects Government actions from discrimination complaints.

The Tribunal says

1. Prior to the final hearing, a number of Orders and undertakings by ACT departments continued a limited ABA program at North Ainslie Primary School. This involved both boys and enabled them to continue a number of years of their primary school education under that system.

The reality is that the Education Department stopped its “limited ABA program at North Ainslie Primary School” and the students spent most of that school year with no suitable place in the ACT education system. The ACT legal system did not protect their education or act to ensure the ACT Government honoured its legal obligations.

The legal process ignored the original complaints and rewrote them according to the respondent, the ACT Government. It found the complaints were unsubstantiated: in other words, failure or refusal to teach a child with ASD is not “unfavourable treatment”. Video evidence showed the Discrimination Tribunal that a child with ASD in a classroom did not get the attention of the teacher for over 60 minutes. The video evidence showed during the time the child was unsupervised and largely ignored: for example, he found a glue stick on the teacher’s desk and ate it. The legal system in the ACT does not regard this lack of attention and supervision of a student as unfavourable treatment.

The case shows that the ACT Discrimination Tribunal allowed Government officials to invent “evidence” (in the form of invented practice, events and quotations from reports) and there are no negative consequences when their evidence is found to be fabricated.

The Tribunal’s decisions show the law (and/or the Tribunal’s interpretation of the law) protects the Government from discrimination complaints. The Tribunal says that

“It is only in a narrow class of cases that discrimination will be made out under the legal requirements of the ACT Discrimination Legislation.”

Woodbury and ACT Government: ACTDT 4 (5 APRIL 2007), para 119.

Through its entire operations, the ACT Discrimination Tribunal did not decide against the ACT Government. It makes no difference that “the ACT is one of only two Australian jurisdictions to have a test of discrimination without a comparator. That is, a person only needs to be treated unfavourably because of a disability, rather than less favourably than those without the disability” (page 36). The nearest the Tribunal ever came was to a decision against the ACT Government was its decision¹¹ that ACT Government *contractors* discriminated against a person who is allergic to perfume.

In other words, the law does not protect students with ASD.

This confirms concerns anticipated a decade ago ...

- 1.27. During the course of this inquiry concerns arose about a decision of the Administrative Appeals Tribunal in relation to Section 27 of the *Discrimination Act 1991*. That decision (Hill v Vella) essentially said that the Discrimination Act has no application in the context of special programs, in this case accommodation services for people with disabilities, that is, these people would have no right of redress. The Government responded by proposing amendments to the Act, which were passed on 7 December 1999. However, the majority of members of the committee believe that the amendments

¹¹ [Lewin v ACT Health & Community Care Service \[2002\] ACDT 2](#)

did not go far enough and people with disabilities will continue to have inadequate rights of redress, which could have serious implications for students with disabilities.

Standing Committee on Education, Community Services and Recreation (December 1999),
Educational Services for Students with a Disability, Report No 3.
See <http://www.parliament.act.gov.au/downloads/reports/E03studentswithadisability.pdf>

Law relevant to the education of students with ASD in the federal jurisdiction is also unimpressive. While Australia has signed various international treaties, the Commonwealth and state/territory governments have not taken the necessary step of creating Australian law that delivers the internationally agreed Rights to its citizens.

Rather than protect the Rights of children (school students) to treatment, rehabilitation and education, the High Court, in its *Purvis vs NSW* decision¹², encourages schools to exclude students with undesirable behaviour. Students have no legal protection. There is no education “safety net” in law for a student who **might** have unwanted behaviour. This is particularly concerning in relation to students with ASD.

Were the law revised to protect students with a disability, it would be good to ensure consistent definitions of disability were used in the law and in education policy.

The ACT Government also needs to recognise the value of early intervention for clinical conditions. It should understand that teachers cannot provide the clinical treatment and rehabilitation that infants with clinical disorders need to prepare them for their education. Without essential clinical rehabilitation to prepare them for school (and life generally) these child will not achieve anything like their potential in their education or in their adult life.

A decade ago, the ACT Government heard that

“ ... every dollar not spent on the early years of a child’s life in the provision of quality education, costs our society \$8.95 a year until the child reaches 27 years of age.”

Standing Committee on Education (September 1998),
The future provision of preschool education, Report Number 1.
See <http://www.parliament.act.gov.au/downloads/reports/E01preschooleducation.pdf>

The failure or refusal of the ACT Government to provide best practice early intervention in the early years of the child’s life to prepare the child with ASD for education is costly to Government, families and the community generally. For children with ASD, the result is particularly poor education outcomes.

The ACT needs genuine legal protection of students to ensure that *no child is left behind* and that *every child matters* in our education system.

Continuing the Shaddock Report metaphor, the ASD ice-cap is melting. It is contributing to the rise of an “educational tide”. Hopefully, the boats laden with ASD students will all rise ... wherever the waters they float in.

I hope this information helps your Inquiry. Please contact me if you need clarification or further information.

Yours sincerely
Bob Buckley

2/1/2010

¹² *Purvis v New South Wales* [2003] HCA 62.