



Human Rights Commission  
Te Kāhui Tika Tangata

# Submission of the Disability Rights Commissioner on Our Schooling Futures: Stronger Together the Report of Tomorrow's Schools Independent Taskforce

April 2019

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# Submission of the Disability Rights Commissioner Paula Tesoriero MNZM to the Tomorrow's Schools Independent Taskforce on Our Schooling Futures: Stronger Together Whiria Nga Tuatitini

## Introduction

1. On behalf of the Human Rights Commission ('the Commission'), I welcome the opportunity to submit on the recommendations in the report by the Tomorrow's Schools Independent Taskforce on Tomorrow's Schools "*Our Schooling Futures: Stronger Together Whiria Nga Tuatini*" ('the Report').<sup>1</sup>
2. Although this submission is primarily concerned with the rights of disabled children and young persons in the school system, I wish to emphasise at the outset the importance of improving the educational experiences and outcomes of children and young people for whom our education system struggles to cater for and whose rights therefore need to be actively promoted.
3. Students from disadvantaged backgrounds, Maori, Pacific, new migrants, refugees or who have additional learning needs are identified in the Report as being less likely to succeed.<sup>2</sup> I am therefore encouraged by the broad ranging and ambitious scale of the proposed reforms and, in particular, the focus of the Taskforce on "*every child, in every school, in every family/whanau, in every community, regardless of where the child lives.*"<sup>3</sup>

## Providing an inclusive education system

4. The provision of an education system that is fundamentally inclusive is not merely an aspirational concept or abstract policy principle. It is a human rights obligation vested upon the New Zealand Government under Article 24 of the UN Convention on the Rights of Persons with Disabilities.<sup>4</sup>

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<sup>1</sup> Tomorrow's Schools Independent Taskforce. (2018). Our schooling futures: Stronger together. Wellington, NZ: Ministry of Education)

<sup>2</sup> Ibid p 29

<sup>3</sup> Ibid p 133

<sup>4</sup> United Nations Convention on the Rights of Persons with Disabilities Retrieved from [https://www.ohchr.org/Documents/Publications/AdvocacyTool\\_en.pdf](https://www.ohchr.org/Documents/Publications/AdvocacyTool_en.pdf) (CRPD)

5. Internationally, a lack of political will has been identified as a key barrier to States Parties meeting their obligations under Article 24.<sup>5</sup> The Commission is therefore encouraged that the Government has committed itself to:

*“...champion a high quality inclusive public education system...”*

and has stated that it:

*“...believes in an education system that is inclusive where disabled students and other students with learning support needs are welcomed and where their achievement, progress, wellbeing and participation is valued and supported.”*<sup>6</sup>

6. However, the Commission's experience suggests that there is some way to go before the above vision will be achieved. Complaints received by the Commission, not to mention those received by other organisations supporting disabled children and their families/whanau, indicate that too many disabled students experience discrimination and exclusion in the school system<sup>7</sup>.

#### Summary of the Commission's position and recommendations

7. We acknowledge the complexity of the task set for the Taskforce, the difficulties posed by the timeframe they had to work to, the diversity of views to be considered and their willingness to engage with the Commission and the public at large.
8. However, in our view, the Taskforce's Report does not provide any clear indication of how the proposed reforms will meet the Government's objective to provide a high quality, inclusive public education system for disabled students. We are disappointed at this missed opportunity to create the sort of transformation needed
9. We strongly encourage a more specific focus on this objective – and the necessary innovations required - in the next phases of the Taskforce's work and future reform processes. We would welcome the opportunity for further detailed engagement on this issue.

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<sup>5</sup> Committee on the Rights of Persons with Disabilities, General Comment No 4, Article 24: Right to inclusive education, (CRPD/C/GC/4, 2 September 2016)

<sup>6</sup> Cabinet Business Committee, Education Portfolio Work Programme: Purpose Objectives and Overview Retrieved from <https://www.education.govt.nz/assets/Documents/Ministry/Information-releases/R-Education-Portfolio-Work-Programme-Purpose-Objectives-and-Overview.pdf>

<sup>7</sup> See Human Rights Commission Annual Report 2017/18 - disability discrimination was one of the most commonly reported complaints to the Commission, of which a significant number occur in the education area. Retrieved from [https://www.hrc.co.nz/files/8314/8529/3642/Final\\_HRC\\_Annual\\_Report\\_15-16.pdf](https://www.hrc.co.nz/files/8314/8529/3642/Final_HRC_Annual_Report_15-16.pdf)

10. With this future work in mind, the Commission recommends that the Taskforce:

- A. Includes within the Report an explicit commitment to New Zealand’s human rights treaty obligations including the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.**
- B. Adopts a human-rights based approach that refers to the rights of disabled children and young people to support as opposed to their need for support.**
- C. Investigates Scotland’s legislative and policy framework as a possible model for New Zealand to adopt**
- D. Adopts the Education for All alternative Chapter Four in its entirety.**

11. More generally, we recommend:

- E. The next phases of reform demonstrate an enhanced and explicit focus on disabled children and young people and the active promotion and protection of their rights.**
- F. In accordance with its obligations under Article 24 UNCRPD, the Government assumes responsibility for ensuring that across all layers of the education reforms that achieving high quality inclusive education for all is the overarching objective.**
- G. The cross-party agreement on the goals for the education system prioritise inclusive education and include a clear and unequivocal commitment to the progressive implementation of inclusive education based on human right principles in the UNCRPD.**
- H. The introduction of a comprehensive and coordinated policy framework for inclusive education, with clear timeframes and clearly identified responsibilities for each of the central education agencies in accordance with obligations under Article 24 UNCRPD.**
- I. A substantive right to inclusive education is introduced as a key element of the legislative framework as well as a clear definition of inclusive education.**
- J. Disabled students are clearly visible in all system wide indicators and data collection systems, in accordance with the State’s obligations under Article 31**

## UNCRPD.

12. The grounds for these recommendations are set out in more detail below under the following headings:

- A. The Human Rights Framework
- B. The Case for Systemic Change
- C. The Commission's Response to Key Issues

### A. The Human Rights Framework

13. The proposed restructuring of the schooling system outlined in the Report has clear human rights implications<sup>8</sup>. The right to education is a human rights principle of core economic and social importance and is recognised as a precondition for social and economic inclusion.<sup>9</sup> It is a right that has been recognised since the Universal Declaration of Human Rights (UDHR, Article 26) in 1948<sup>10</sup>, and has been articulated in a range of international conventions, including the International Covenant on Economic, Social And Cultural Rights (ICESCR, 1966)<sup>11</sup> and the Convention on the Rights of the Child (CRC, 1989).<sup>12</sup>

#### The right to inclusive education

10. The adoption of the UNCRPD by the UN General Assembly on 13 December 2006 augmented the right to education to provide that disabled people have a specific and distinct right to inclusive education under Article 24. It includes the following elements:

- a. The right to access an inclusive, quality education on an equal basis with others [Art 24(2)(b)].
- b. Reasonable accommodation of the student's requirements [Art 24(2) (c)].
- c. The right of students to receive support within the general education system, and that such support measures are effective, individualised, provided in environment that

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<sup>8</sup> NOTE: New Zealand's performance in meeting and upholding the right to education and inclusive has been subject to regular scrutiny by UN Treaty Bodies during their periodic review of New Zealand.

<sup>9</sup> See OHCHR Thematic study on the right of persons with disabilities to education A/HRC/25/29 December 2013 (TS A/HRC/25/29 December 2013)

<sup>10</sup> Universal Declaration of Human Rights Retrieved <https://www.un.org/en/universal-declaration-human-rights/>

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (ICESCR)

<sup>12</sup> United Nations Convention on the Rights of the Child Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (CRC)

maximises academic and social development, and consistent with the goal of full inclusion [Arts 24(2)(d) and (e)].<sup>13</sup>

14. General Comment No. 4 (2016) of the UN Committee on the Rights of Persons with Disabilities on the right to an inclusive education under Article 24 of the UNCRPD (the General Comment)<sup>14</sup> provides guidance to governments on its implementation. Among other things, the General Comment provides that:

*The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility....**It requires an in-depth transformation of education systems in legislation, policy, and the mechanisms for financing, administration, design, delivery and monitoring of education [emphasis added]***

11. The right to inclusive education is also reflected in the sustainable development goals (SDGs) of the United Nations Agenda for Sustainable Development. UN SGD Goal 4 is to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”.<sup>15</sup> It includes a target to ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous people and children in vulnerable situations<sup>16</sup>. In 2019 the New Zealand Government will be preparing its first report on progress towards the meeting the 17 SDGs<sup>17</sup>.

#### The benefits of an inclusive education approach

12. There is now a large body of research that indicates inclusive education settings benefit students with and without disabilities. A systemic review of 280 studies from 25 countries<sup>18</sup> found clear and consistent evidence that inclusive educational settings can confer substantial short and long-term benefits for students with and without disabilities, including stronger skills

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<sup>13</sup> United Nations Convention on the Rights of Persons with Disabilities Retrieved from [https://www.ohchr.org/Documents/Publications/AdvocacyTool\\_en.pdf](https://www.ohchr.org/Documents/Publications/AdvocacyTool_en.pdf) (CRPD)

<sup>14</sup> CRPD/C/GC/4, 2 September 2016

<sup>15</sup> See SDG <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

<sup>16</sup> SDG Goal 4, Outcome Target 4.5

<sup>17</sup> The report, called a Voluntary National Review (VNR), will be provided as part of New Zealand's participation in the High-Level Political Forum at the UN Economic and Social Council in July 2019.

<sup>18</sup> Dr Thomas Hehir, “A summary of the Evidence on Inclusive Education” Report, Harvard Graduate School of Education 2017 accessed at <http://allmeansall.org.au/research/> p 9

in reading and mathematics higher rates of attendance, reduced behavioural problems, and increased likelihood of students completing secondary school.<sup>19</sup>

13. Inclusion is not just about systems and services; it is also about the attitudes of the teachers and school leaders. Teachers and school leaders with positive attitudes towards inclusion are more likely to adapt the way they work for the benefit of all students and are more likely to influence their colleagues in positive ways to support inclusion.<sup>20</sup> As identified in the Report, there is now awareness of the need for the education system to respond more effectively to nullify the deficit thinking, unconscious bias and racism<sup>21</sup> that evidence shows has lowered expectations of success for particular groups of students.<sup>22</sup>
14. From the late 1990's the Ministry of Education has worked towards the implementation of an inclusive education system. The stated aim of Special Education 2000, the special education resourcing framework introduced progressively from 1996, was to establish a world class inclusive education system. Since New Zealand ratified the UNCRPD in 2008 the Ministry of Education and has taken steps to reflect the right to inclusive education in policies and initiatives. The Ministry of Education has referred to the UNCRPD as placing a binding obligation upon New Zealand to provide an inclusive education system<sup>23</sup>, an obligation that is reinforced by the New Zealand Disability Strategy and supported by the National Curriculum. Most significantly, in 2010 the Ministry initiated the now concluded *Success for All* programme<sup>24</sup> which was launched with the goal of achieving inclusive education practices across all schools by 2014.

#### Incorporation of the inclusive education in legislation and policy

15. While the Ministry of Education has recognised the Government's obligations to provide an inclusive education environment, and despite initiatives such as *Success for All*, inclusive education principles are not set out in education legislation nor are there any currently active inclusive education policy strategies in place.

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<sup>19</sup> Ibid page 9

<sup>20</sup> Ibid Footnote 1 p 87

<sup>21</sup> Office of the Children's Commissioner & NZ Trustees Association (2018). Education matters to me: Key insights, Retrieved from <http://www.occ.org.nz/publications/reports/education-matters-to-me-key-insights/>

<sup>22</sup> Ibid Footnote 1 p 87

<sup>23</sup> Ministry of Education, Supports and Services for Learners with Special Education Needs/Disabilities, April 2012

<sup>24</sup> Ministry of Education, Success for All. Retrieved from <http://www.education.govt.nz/assets/Documents/School/Inclusive-education/SuccessForAllEnglish.pdf>

16. This has drawn comment and recommendations from UN treaty bodies. In 2014, the UNCRPD Committee recommended that the New Zealand Government include in legislation an enforceable right to inclusive education<sup>25</sup>, to improve outcomes for disabled students. In 2016 the UNCROC Committee recommended that the ongoing review of the Education Act complies with the provisions and principles of the Convention<sup>26</sup>. More recently the ICESCR Committee recommended in 2018 New Zealand harmonise its domestic legislation, notably the provisions of the Humans Rights Act 1993 and Education Act 1989 related to the rights of persons with disabilities, including concerning reasonable accommodation and inclusive education,<sup>27</sup>

17. Domestically, New Zealand's Independent Monitoring Mechanism on the UNCRPD has also recommended that the Government include the right to inclusive education in legislation<sup>28</sup>. The Commission also recommended in its 2017 submission on the Education (Update) Amendment Bill that section 8 of the Education Act 1989 be amended to establish an unqualified right to inclusive education in order to achieve compliance with Article 24.

18. New Zealand's combined second and third periodic review under the UNCRPD is due to take place in 2020. We note from the List of Issues Prior to Reporting issued by the UNCRPD Committee, New Zealand will be examined on that the Government has been asked to provide information about measures taken to;

- a. Establish the enforceable right to inclusive education;
- b. Ensure that the principles of inclusive education are built into all levels of the education system, from the legislation to the training of teachers, to on-the-job support and guidance, to work planning and budgeting for the school year by school boards, and to operationalise them;

19. The current education reforms provide an opportunity to explicitly recognise and affirm the right to inclusive education within legislation and to develop a comprehensive and

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<sup>25</sup> CRPD/C/NZL/CO/1 31 October 2014 Retrieved from [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2fCO%2f1&Lang=en)

<sup>26</sup> CRC/C/NZL/CO/5 7 October 2016 Retrieved from [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5)

<sup>27</sup> E/C.12/NZL/CO/4 1 May 2018 Retrieved from [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5)

<sup>28</sup> IMM, Second Report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities, June 2014, p79

coordinated legislative and policy framework for inclusive education. The Commission would like to see this issue addressed in any future Taskforce Report or related reform process.

## **B. The Case for Systemic Change**

20. The Commission commends the Taskforce for the identification and robust discussion of the problems within the existing system included in the Report. The findings provide a strong basis for systemic change. In particular:

- a. The education system is largely failing to reflect the principles of Te Tiriti o Waitangi
- b. The current approach to school funding and staffing does not result in every school being able to meet all of their students' needs.
- c. There is a big gap in achievement between our highest and lowest performers
- d. The system does not work for too many students and this is particularly so for children from disadvantaged homes, who are Maori, Pacific, refugees and new migrants, or who have additional learning needs.
- e. There are concerns about student wellbeing, racism and high levels of bullying reported by students in our schools<sup>29</sup>
- f. Supporting students with additional learning needs and making sure they are included in educational settings is one of the most important and longstanding issues facing our system.<sup>30</sup>

21. Importantly, the review acknowledges that our education system, as it currently stands, is not working as a system. This echoes the findings of the 2016 review of the education system by the State Services Commission<sup>31</sup> that found there was too much variation in learner achievement with long standing problems for particular groups of learners like Maori and Pasifika, and those with learning difficulties. This review found that this variation was caused by:

*“...too many systemic weaknesses in the way funding, information and people resources are developed and deployed to be confident that the good results are the consequence of good system performance, rather than individuals and organisations doing well despite the system.”<sup>32</sup>*

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<sup>29</sup> *ibid* Footnote 1 p11

<sup>30</sup> *ibid* Footnote 1 p 78

<sup>31</sup> State Services Commission, A Blueprint for Education System Stewardship-September 2016 page 4

<sup>32</sup> *ibid*

22. The review also identified a significant group of learners whose educational needs fall outside the scope of regular learning support services and beyond what a well-supported teacher can do in the classroom.

### Specific Challenges faced by Disabled Students

23. Recent training and employment data suggests the education system is failing to deliver equitable outcomes for disabled people. According to the Household Labour Force Survey June Quarter 2018 figures, the NEET (Not in Employment, Education or Training) rate for disabled young people was 43.3%. This was more than four times the NEET rate for non-disabled young people (9.7%). Of the disabled young people not earning or learning, almost 85% were not in the labour force.<sup>33</sup>

24. This level of structural discrimination further emphasises that there is a strong case for significant systemic change. Our current education system contains a number of deficiencies that create barriers to disabled students enjoying their right to an inclusive, good quality education. These deficiencies include:

- **No central collection of aggregated or disaggregated data** on the needs of students with additional learning needs and no way of knowing how the education system is doing overall for disabled students.
- **Chronic underfunding** means disabled students continue to experience significant barriers to inclusive education including, inadequate support for students and educators, difficulties accessing the curriculum, increasing numbers of formal and informal suspensions and complaints of school discipline and bullying.
- **Initial teacher education and ongoing professional development in inclusive practice remains a problem.** Findings from the Education Review Office Report *Newly Graduated Teachers: Preparation and Confidence to Teach*<sup>34</sup> confirms that many newly graduated teachers lack confidence and capability to design and implement a curriculum responsive to all learners including those who need additional support to experience success.

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<sup>33</sup> See <https://www.stats.govt.nz/reports/labour-market-measures-for-disabled-people>

<sup>34</sup> Education Review Office, *Newly Graduated Teachers: Preparation and Confidence to Teach*, December 2017 Retrieved from <https://www.ero.govt.nz/assets/Uploads/ERO-Newly-Graduated-Teachers-December-2017.pdf>

## The proposed establishment of Education Hubs

25. In order to address the chronic problems outlined above, the Report has recommended that the state school system is restructured to a more centralised model of governance and accountability. It is proposed that this is done through the establishment of regional-level Education Hubs. Many of the current governance responsibilities of Boards of Trustees will be shifted to the Hubs. This represents a fundamental departure from the Tomorrow's Schools model.
26. Whether this will bring about similarly transformative outcomes for disabled students is difficult to predict. Schooling provision, the impact of competition on school choice for disabled students, problems with the capability and capacity of the teaching workforce, school leadership and the effect of chronic under funding on access to reasonable accommodations and specialist services, are all key issues for disabled students, which we consider have not all been adequately dealt with.
27. In our view, there are positives and negatives associated with the proposed Education Hubs approach.
28. On the positive side, the development of Education Hubs will create a much-needed structural intermediary to provide support to schools and to help build the capacity and capabilities of the education system. In particular, the Commission strongly supports the proposals for Education Hubs to provide an independent advocacy and complaint service for students, families and whanau, to manage school suspensions<sup>35</sup> and to collect and publish data and information from schools on progress, achievement, wellbeing and belonging.<sup>36</sup>
29. On the flipside, we are concerned that the proposed Education Hubs model may risk compromising the right of disabled students to attend their local school on an equal basis to other students, if they are not explicitly charged with ensuring access to inclusive education for all and provided with adequate funding to do so. As a result of being tasked with the efficient use of resources across their network of schools, Hubs may end up concentrating resources in a way that consolidates and perpetuates "magnet" schools.

### **C. Commission's Response to the Report's Key Issues**

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<sup>35</sup> *ibid* Footnote 1 p 53

<sup>36</sup> *ibid* Footnote 1 p 52

30. In order for the educational reforms, (of which the review of Tomorrow's Schools is a key component), to deliver an education system that includes and values all children, (including disabled children), barriers that impede inclusion and access to education must be addressed.
31. This means that the principles of inclusive education need to be built into all levels of the education system. This includes legislation, curriculum, assessment, initial and ongoing teacher education, school leadership and school budgeting and work planning. While the Taskforce was not asked to look at each of these issues it is difficult to meaningfully assess whether the reforms will deliver the change needed without understanding how the proposed reforms will impact all layers of the education system.
32. Therefore, in framing the Commission's response to the Report's Key Issues, we have considered the extent to which the proposed changes build the vision of inclusive education and address barriers to its realisation. This forms the basis of the recommendations set out in paragraphs 9 and 10 above.

#### Central Government Agencies leadership and accountability

33. The Commission agrees changes to the roles and responsibilities of central government agencies is key, albeit insufficient alone, to addressing the longstanding systemic issues and discrimination experienced by disabled students<sup>37</sup>.
34. A more centralised model may well be better geared to deliver a comprehensive and coordinated policy framework for inclusive education, with clear timeframes and clearly identified responsibilities for each of the central education agencies have the potential to address. That said, because these issues have not been well canvassed in the Report, it is difficult to assess whether the proposed structural model will result in the change needed for disabled young people.
35. Improved political will and consensus will be required. Accordingly, the Commission agrees with Recommendation 29 that "... *to fundamentally improve the performance of our education system a cross-party agreement on the long-term goals and evaluation indicators for our education system is essential.*"<sup>38</sup>

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<sup>37</sup> Ibid Footnote 1 p 117

<sup>38</sup> Ibid Footnote 1 p129

36. We consider that it is critically important that these goals prioritise inclusive education and that there is cross-party agreement to progressively implement and monitor the right to inclusive education in accordance with Article 24 UNCRPD. We therefore recommend that disabled students are clearly visible in all system wide indicators and data collection systems in accordance with obligations under Article 31 UNCRPD.
37. Scotland provides an example of a comparative jurisdiction to New Zealand for a legislative and policy framework for inclusive education and where annual reporting to Parliament has been used effectively to monitor the rights of students with additional learning needs for the past five years. The Education (Additional Support for Learning) Act required Ministers to report to Parliament annually on; the number of children with additional support needs, the principle factors giving rise to the additional needs, the types of support provided and the cost of providing support.<sup>39</sup> We recommend that the Taskforce investigates Scotland's legislative and policy framework as a possible model for New Zealand to adopt.

#### Schooling provision offering genuine choice

38. As the Report acknowledges disabled children may be inappropriately discouraged from enrolling in their local school. Under the guise that a child's needs would be better met by another school<sup>40</sup>, inclusive capacity or willingness becomes concentrated in a few 'magnet schools, which offer specialist support and facilities.
39. As the Taskforce notes for some parents and whanau special schools and units are a vital part of the schooling system.<sup>41</sup> Currently special schools and units are sometimes the only place where young disabled people can have their needs met. This is because this is where the expertise and resources tend to be concentrated. There are currently 28 Special Schools throughout New Zealand, eleven of which are in the Auckland area. This can create an incentive for resources to be allocated to segregated learning settings instead of building capacity in inclusive education within the mainstream.
40. However, being made to feel unwelcome or lacking confidence that mainstream settings have the capabilities of resources to meet their child's learning needs can lead parents to enrolling their child in special schools or units by default.

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<sup>39</sup> See <https://www.gov.scot/policies/schools/additional-support-for-learning/>

<sup>40</sup> ibid Footnote 1 p 60

<sup>41</sup> ibid Footnote 1 P 79

41. In order to enable genuine choice, avoid undue concentration of services and ensure equality of access, obligations upon individual schools to build inclusive capacity must therefore be system wide and non-transferable.
42. We would like to see meaningful and genuine choice for disabled young people and their families. Co-design and innovative thinking could contribute to delivering the transformative change needed.

Disability and Learning Support resourced to provide access and reasonable accommodations

43. The Commission has read and endorses “*They are Us* A rewrite of Chapter Four: Disability and Learning Support, Our Schooling Futures, Stronger Together” prepared for the Education for All forum by Dr Jude MacArthur and Dr Gill Rutherford. We recommend that the Taskforces adopts the Education for All alternative Chapter Four in its entirety.
44. In its report, the Taskforce states “*the Ministry of Education’s new Learning Support delivery model and the draft Disability and Learning Support Action Plan<sup>42</sup> will hopefully provide the much-needed coherence and increased funding and accessibility for these students and their parents.*”<sup>43</sup> We recommend that the Disability and Learning Support Plan should not be treated as the final intervention for disabled students and their families as it does not go far enough to address the systemic concerns.
45. Further to this point, we note that the Report states that “*For some parents and whānau special schools and units are a vital part of the schooling system. We have heard that they can provide valuable expertise and support to the learning network*”.<sup>44</sup>The Report goes on to recommend that Education Hubs “*ensure appropriate local provision of special schools and the use of their expertise for children and young people with very high needs.*”<sup>45</sup>
46. We recommend that caution is exercised with this approach. As Special Schools are not spread evenly throughout New Zealand, any policy decision in favour of further proliferation of special schools/units could result in the establishment of further segregate settings to the resulting detriment of inclusive mainstream settings. This would be a retrogressive step and contrary to New Zealand’s international treaty obligations. The Commission supports an

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<sup>42</sup> Draft Disability and Learning Support Action Plan A3 page 1 accessed at <https://www.beehive.govt.nz/release/draft-disability-and-learning-support-action-plan-released>

<sup>43</sup> ibid Footnote 1 p 16

<sup>44</sup> ibid Footnote 1 p 79

<sup>45</sup> ibid Footnote 1 p 85

approach where resources and expertise are used to build capacity in inclusive education across all school settings.

### Teaching & School Leadership

47. The quality of teaching is the major 'in school' influence on student success<sup>46</sup> and this is especially so for disabled students. One of the key barriers impeding disabled students is insufficient education of all teaching staff. <sup>47</sup> resulting in a lack of technical knowledge and capacity to understand and implement the right to inclusive education.
48. Findings from the Education Review Office Report *Newly Graduated Teachers: Preparation and Confidence to Teach*<sup>48</sup> confirms that many newly graduated teachers lack confidence and capability to design and implement a curriculum responsive to all learners including those who need tailored support to experience success. Evidence from this research highlights the need for teachers to be better prepared and given ongoing support in these critical areas if system wide high-level teaching and learning environments that benefit all students are to be created.
49. We recommend that, in accordance with guidance provided in the UN CRDD Committee's General Comment No 4, teachers at all levels receive education to provide them with the core competencies and values necessary to work in inclusive educational environments. Initial teacher education and ongoing professional development should include an understanding of human diversity, the human rights model of disability and inclusive pedagogy that enables teachers to identify all their students' strengths, abilities and learning styles ensuring their participation in inclusive education environments.<sup>49</sup>
50. As the Report acknowledges there is an urgent need to consider the best roles, career pathways and support for paraprofessionals.<sup>50</sup> We fully support the recommendation that a coherent future-focused workforce strategy is developed and that this includes viable pathways for the professional development, and employment of teacher aides and other paraprofessionals.<sup>51</sup> Teacher aides who support teachers for student benefit in their daily practice are an essential part of the schooling system. We agree it is unacceptable for those

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<sup>46</sup> ibid Footnote 1 Page 19

<sup>47</sup> ibid Page2

<sup>48</sup> ibid Footnote 32

<sup>49</sup> ibid Page 19

<sup>50</sup> Ibid Footnote 1 p 92

<sup>51</sup> Ibid Footnote 1 p 94

who help support some of our most vulnerable young people to have insecure employment conditions and low wages.<sup>52</sup> This valuable resource needs to be grown and appropriately remunerated and resourced.

### School Resourcing

51. Implementation of the right to inclusive education requires a shift from an over-riding focus on efficiency to one that utilises a funding model that enables all educational settings to be human rights compliant, together with sanctions for failure to provide reasonable accommodations.<sup>53</sup> International guidance encourages governments to transfer resources from segregated settings to inclusive environments, including the transformation of special schools into resource centres<sup>54</sup> for inclusion.<sup>54</sup>

52. We note that the resourcing of schools was outside the Taskforce's terms of reference. However, it is notable that the Taskforce raises key resourcing issues relating to the insufficiency of the overall amount of resourcing for schools and the problems over the way equity funding is provided. Major equity issues also exist between special school settings and mainstream settings. As noted in the Cabinet Paper Strengthening Inclusion and Modernising Learning Support in 2015/16 over 25% (\$167 Million) of the total Learning Support budget of \$650 million was paid directly to special schools for approximately 4000 students.<sup>55</sup> We believe it is vital that appropriate and equitable resourcing be provided for disabled students in every educational setting of their choice.

53. Chronic underfunding and inadequate funding mechanisms to support reasonable accommodations means disabled students continue to experience significant barriers to inclusive education. As highlighted in the New Zealand Institute of Economic Research's 2009 review of the special education resourcing framework: "*Resourcing frameworks can support or work against policy objectives.*"

54. In order to comply with human rights standards, such policy objectives must include the right of all students to attend their local school and horizontal equity (equal resourcing for equal need, irrespective of school setting or location). However, the present funding system has

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<sup>52</sup> Ibid Footnote 1 p 92

<sup>53</sup> CRPD/C/GC/4, 2 September 2016,

<sup>54</sup> Ibid

<sup>55</sup> Cabinet Social Policy Committee, Strengthening Inclusion and Modernising Learning Support Retrieved from <https://www.education.govt.nz/assets/Documents/Ministry/Initiatives/special-education-update/Cabinet-Paper-Strengthening-Inclusion-and-Modernising-Learning-Support-July-2016.pdf>

not enabled this and instead tends to disincentivise schools to welcome and include all students.

55. In particular, the current funding model has led to long delays accessing specialist services, such as communication and behaviour support, for students and teachers within mainstream school settings. Currently much of the dedicated learning support financial and human resources are concentrated in a relatively small number of segregated special school settings. We consider that it is critical to ensure equity of funding, regardless of the educational setting.

### Conclusion

56. In conclusion, while we acknowledge the complexity and scope of the reform agenda considered by the Taskforce, we are disappointed that the Report does not provide an initial pathway towards the development of a high quality, inclusive public education system for disabled students. We consider that this constitutes a missed opportunity to initiate, at this early stage of the reform process, the cultural and structural transformation required to meet this important human rights objective.

57. The Commission strongly encourages a strengthened focus on inclusive education – and the necessary innovations required to meet the rights of disabled students - in the next phases of the Taskforce's work and future reform processes. We would welcome the opportunity to engage with the Taskforce and the Ministry of Education on this crucial issue.