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Safe at school? Exploring safety and harm of students with cognitive disability in and around school

Sally Robinson
Southern Cross University

Dominique McGovern
Southern Cross University

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safe

AT SCHOOL?

EXPLORING SAFETY AND HARM OF
STUDENTS WITH COGNITIVE DISABILITY
IN AND AROUND SCHOOL

SALLY ROBINSON
DOMINIQUE MCGOVERN

Centre for Children and Young People
Southern Cross University

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Centre for Children
and Young People



PROJECT TEAM

Sally Robinson, Lel D'Aegher, Anne Graham, Dominique McGovern (Centre for Children and Young People)
Fiona Given, Phillip French (Australian Centre for Disability Law – part time)

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FURTHER INFORMATION

Further copies of this report and the accompanying resources can be obtained on our website, www.ccyp.scu.edu.au, email ccyp@scu.edu.au or by phoning the Centre for Children and Young People on 02 6620 3395.

This report provides information, not advice. It is intended as a guide to the law, and should not be used as a substitute for legal advice.

In the event that specific legal information is required, we suggest you contact the Intellectual Disability Rights Service for further information and advice: www.idrs.org.au or phone 02 9318 0144 or Freecall- 1800 666 611 (outside Sydney) or your local Community Legal Centre (www.clcnsw.org.au).

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Thank you to all of the students and family members who shared their experiences so openly with us. We hope we have treated your stories with the respect they deserve, and remain grateful for your fortitude in sharing painful experiences. Thank you also to the education and other professional participants, who gave freely of their expertise and insights.

Our thanks also to Professor Jim Jackson for his assistance with the legal review.

This report uses pseudonyms to protect the confidentiality of participants.

GLOSSARY

definitions taken from <http://safeschoolshub.edu.au/resources-and-help/Glossary>

BULLYING

Bullying is repeated verbal, physical, social or psychological behaviour that is harmful and involves the misuse of power by an individual or group towards one or more persons. Cyberbullying refers to bullying through information and communication technologies.

Conflict or fights between equals and single incidents are not defined as bullying.

Bullying of any form or for any reason can have long-term effects on those involved including bystanders.

CHILD ABUSE

Child abuse or maltreatment refers to any non-accidental behaviour by parents, caregivers, other adults or older adolescents that is outside the norms of conduct and entails a substantial risk of causing physical or emotional harm to a child or young person. Such behaviours may be intentional or unintentional and can include acts of omission (ie neglect) and commission (ie abuse).

Child abuse is commonly divided into five main subtypes: physical abuse; emotional maltreatment; neglect; sexual abuse; and the witnessing of family violence. (Price-Robertson and Bromfield, 2009)

DISCRIMINATION

Discrimination occurs when people are treated less favourably than others because of their race, culture or ethnic origin; religion; physical characteristics; gender; sexual orientation; marital, parenting or economic status; age; ability or disability. Discrimination is often ongoing and commonly involves exclusion or rejection.

HARASSMENT

Harassment is behaviour that targets an individual or group due to their identity, race, culture or ethnic origin; religion; physical characteristics; gender; sexual orientation; marital, parenting or economic status; age; ability or disability and that offends, humiliates, intimidates or creates a hostile environment.

Harassment may be an ongoing pattern of behaviour, or it may be a single act. It may be directed randomly or towards the same person/s. It may be intentional or unintentional (ie words or actions that offend and distress one person may be genuinely regarded by the person doing them as minor or harmless).

Harassment is unacceptable and needs to be addressed as part of creating a safe school but it would not be considered bullying if any one or more of the following three features were present.

- It occurred only once and was not part of a repeated pattern.
- It (genuinely) was not intended to offend, demean, annoy, alarm or abuse.
- It was not directed towards the same person/s each time.

VIOLENCE

Violence is the intentional use of physical force or power, threatened or actual, against another person/s that results in psychological harm, injury or in some cases death. Violence may involve provoked or unprovoked acts and can be a single incident, a random act or can occur over time.

GLOSSARY

WHOLE-SCHOOL APPROACH

A whole-school approach focuses on positive partnerships and assumes that all members of the school community (ie teachers, support staff, students and parents) have a significant role to play in addressing aggression, harassment and bullying and promoting a supportive school culture. A whole-school approach also involves all areas of the school: policy and procedures, teaching practices, curriculum, and the organisation and supervision of the physical and social environment of the school. All teachers accept responsibility for preventing and managing aggression, harassment and bullying and respond consistently and sensitively according to the agreed procedures. Safe school messages and practices are not just added on but are embedded in many areas of the curriculum and in the daily life of the school.

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Summary

This project aimed to generate knowledge to improve the access of students with cognitive disability to protection in the event of maltreatment, and to strengthen the implementation of their legal and human rights in school settings. To do this, we identified the range of protections currently available at law to these young people, conducted research to identify areas where they are not receiving due access to justice, and analysed this combined material to identify opportunities for improving law, policy and practice.

BACKGROUND

The abuse and neglect of children and young people with disability is a longstanding and pervasive social problem. This harm in children and young people's lives ranges from chronic low level harassment and lack of appropriate care to extreme situations of criminal assault (Caldas & Bensy, 2014; Holzbauer, 2008; Reiter, Bryen, & Shachar, 2007). It is underpinned by social and systemic practices and attitudes which set low expectations for children and young people with disability and which frequently leave them on the margins in both practice and policy (Higgins & Swain, 2010; Stalker & McArthur, 2012). The most reliable research evidence suggests that children and young people with disability experience higher incidences of interpersonal harm at school compared to their peers, and across multiple life domains are abused at approximately **three times the rate** of children without disability. (Caldas & Bensy, 2014; Jones et al., 2012; Reiter et al., 2007; Stalker & McArthur, 2012; Sullivan & Knutson, 2000).

Previous research shows that school students with disability experience high rates of bias-based bullying, often compounded by social isolation. Chronic teasing and harassment impacts upon students' confidence, mental health and sense of belonging at school, reinforcing their loneliness and leaving them in an increasingly vulnerable social and emotional position. In addition to harm resulting from bullying, students with cognitive disability experience other interpersonal harms at school, both intentional and unintentional. For example, children and young people with disability appear to be a greater risk of sexual abuse, whether by other students or teachers/care staff (Caldas & Bensy, 2014; Kvam, 2003). Other harms are perhaps less intentional, resulting from systemic school systems and administrative needs. For instance, students describe having their means of communication, movement and relationships with peers constrained by the preferences and administrative needs of staff (Hoskin, 2010; MacArthur, 2012; Salmon, 2013).

Despite this picture, little is known about the perspectives of students with cognitive disability and their families about safety and harm in and around school. This missing perspective is critical in developing responses which better understand the problem, can respond in ways that meet young people's needs, and which build on existing and developing legal and policy frameworks and good practice.

THE RESEARCH

To develop a clearer understanding of safety and harm from the perspective of students with cognitive disability and those who support them, we explored four core questions with students, families, educators and child protection, family and disability support workers:

What characterizes the experience of harm of children and young people with cognitive disability in and around school?

What are the barriers to keeping students safe?

What promotes personal safety for children and young people with cognitive disability?

How can their legal and human rights be upheld?

The experiences of twenty seven students across both primary and high school are contained in this report. Some are related directly by students themselves, some by families (in the case of students with high support needs or those traumatized by their experiences), and some by young adults with cognitive disability reflecting on their recent schooling. Fourteen key stakeholders from education, child protection and family and disability support sectors contributed through individual interviews.

Legal and policy frameworks

An extensive review of law and policy was conducted to develop a map of the legal and policy frameworks in place to protect students with cognitive disability who experience abuse, neglect or purposeful harm from others in and around school.

A framework of legal protections exist to uphold the rights of students with cognitive disability. These are embedded in human rights; anti-discrimination law (including the Disability Standards for Education); criminal law; civil and personal injury law; and child protection law. While protections exist, lack of recognition of harm as criminal or civil wrong, little support to take action, and structural and systemic barriers resulted in few cases of legal action for abuses experienced in school contexts. In this research, no students and their families had experience of using criminal law to get redress for assaults, harassment, bullying or intimidation. Two families had attempted to involve police at the time of their son or daughter's abuse, but no charges were laid due to a lack of capacity of the student to give evidence in one case and a claim that either schools or police dealt with assault, but not both, in another.

There are a wide range of policies, at both national and state levels, relating to safety at school, including those focused on inclusion, reducing bullying and harassment, improving wellbeing and targeting problem behaviour. A broad number of policies were located which include students with disability tangentially in their aspirations, but less detailed support for schools, parents and students could be found in public documents at a state, regional and school level. As a group who comprise a significant percentage of the school community, there is less recognition of their particular needs and aspirations than might be expected in the otherwise comprehensive approach to school safety in key policy and practice initiatives such as the national Safe Schools Hub.

RESULTS OF THE RESEARCH

The experience of harm in and around school

Children and young people and their families discussed a wide range of harms that they had personally experienced in and around school, ranging from cruel teasing to sexual assault. While there is considerable cross-over between the groups, some distinct differences also emerged in the emphases of each group.

Students and ex-students talked predominantly about the ongoing (sometimes daily) interpersonal abuses they face or faced, and how these impacted on their confidence, happiness and wellbeing. Families raised more 'critical incident' types of injury and assault, and talked about distress and discord that these harms caused to both their children and the wider family, and about the difficulties they had in trying to resolve both the causes and the effects of the harm.

Key stakeholders – educators and administrators in schools, child protection workers, therapists and disability support workers – spoke more systemically about the impact of low expectations, discrimination and lack of access to needed support. Many of them saw the abuses experienced by students with cognitive disability arising in response to these core causative features.

Barriers to keeping students safe

When asked 'what makes it hard to stay safe?', children and young people talked about several key barriers to personal safety, particularly centred on how chronic harm was in their lives, feeling unheard and isolated, and feeling either that help was not provided when they asked, or unable to ask for help. Young adults in particular talked about the negative impact on their lives over time.

The interviews conducted with family members revealed complementary concerns to those of children and young people. Parents and grandparents were primarily struggling with communication, attitudes of school personnel, and a lack of adequate concern for the harm experienced by their child.

Consistent themes emerged from interviews with key stakeholders about the increasing complexity of the environment in which they were working, and how few resources (financial, collaborative and cultural) they felt able to draw on to best support students with cognitive disability, particularly in mainstream schools. Participants stressed difficulties in both accessing information and in sharing information with colleagues who may be unwilling to take up inclusive practice; and how difficult it can be to support individual children when systemic structures do not support the actions needed.

Factors that promote personal safety for students

Students were very consistent in talking about the things that helped when they experienced harm. Having someone who knows and values you, being acknowledged, listened to, and having concerns taken seriously was of great significance to young people. These connections gave them somewhere to turn if things were not going well, and increased the likelihood that they would be believed and that action would be taken. A considerable number of children and young people in this study did not feel that they had someone in their school who filled this role.

When students experienced abuse, they said the most helpful thing was being believed and having action taken to resolve the situation. Children and young people also said that having strategies to deal with abuse helped them. Some of their strategies were felt to be effective in preventing abuse from occurring, while others were coping strategies for getting through a situation that they felt unable to significantly change. Several young people were concerned about the root causes of interpersonal harm and violence, and felt that action was needed to get to the bottom of problems for both victims and instigators of bullying and assault.

Families felt that proactive support which pre-empted unsafe situations was critical in preventing harm from occurring, and promoting a safe culture and environment for their child. The importance of teachers maintaining and expressing positive attitudes about their children was made clear in building their

confidence, resilience and capacity to report negative experiences or harm, which was felt to help avoid harassment growing into a bigger problem. Responsiveness and openness when problems arose was highly valued by families in building their confidence in supporting their children in addressing concerns about safety.

Similar to families, stakeholders working in or with schools viewed protection as connected to relationships, talking about the importance of building rapport, communication, and having trustworthy adults that children feel they can rely on. The creation of a safe school culture was viewed as critical by most key stakeholders interviewed. Whole of school positive behaviour support, engagement from the principal through all levels of the school in inclusion building activities, and the promotion of a culture in which diversity was acknowledged and respected were viewed by interviewees as core components of positive school cultures which were safety promoting. Where there is a lack of commitment to a child-centred approach, several stakeholders were of the view that students with cognitive disability felt the impact disproportionately. Meaningfully putting policy into practice, developing ways to promote the capability of students with cognitive disability, and working collaboratively with families were identified as key ways to promote students' safety.

How students' legal and human rights can be upheld

When asked what would have made things better, students felt that responding more quickly and vigorously, working harder to address the causes of bullying and interpersonal harm, and trying new and different strategies would help. Young people had several ideas about how interpersonal harm could be prevented at school, focused on education, increased monitoring and early intervention to prevent student to student harm.

When asked what would help improve the current systems, families focused on increasing the level of priority given to responses by school personnel to reports of harm or complaints, attention to prevention, education, and advocacy.

While stakeholders had awareness of policies, a number identified a gap in bringing policies together into a coherent whole. They saw a need for more support and guidance for teachers in mainstream classrooms to increase their capacity to support a diverse student group. They also perceived a need for more support and guidance for students with cognitive disability in the playground to build social skills through play, and for all students to develop the empathy and community focus of the wider school community, and enforce the school's expectations about the parameters of behaviour in and around the school with all students. Access to therapeutic support for students who had experienced harm was raised as important, particularly those recovering from complex trauma. Support and training for bus drivers and bus companies was seen as needed to provide skills to bus drivers in supporting students with additional needs, and encouragement for bus companies to enforce codes of conduct.



IMPLICATIONS AND RECOMMENDATIONS FOR POLICY

Children and young people and their families told us about many different forms of harm and the ways in which this abuse impaired their school lives. Being harassed and bullied, physically assaulted, threatened and humiliated were ongoing and chronic forms of harm for some children and young who participated in this research. Resolving these situations was frequently difficult, and both students and their families talked about many instances where schools were unresponsive to their requests for help, complaints and repeated attempts to resolve interpersonal harm.

In some cases, young people and families felt that schools responded well when they experienced harm. On these occasions, teachers were proactive, they believed students, listened and took action to sort things out quickly. Families were treated seriously and courteously, and kept informed about progress. School leaders showed strong personal commitment to the safety of students and to resolving breaches of all students' rights to safety and to dealing with harassment, bullying, abuse and violence. This gave children and young people confidence that they could continue at school, that they could deal with future problems, and that their problems were seen as significant and important.

For educators, significant personal commitment to student's rights was expressed alongside significant tensions in managing increasing complexity in students, increasing expectations in teaching in mainstream classrooms, along with decreasing support resources. External stakeholders saw this tension in the lack of support provided to students for needed supports, and the consequent harms that evolved as their behaviour escalated through frustration. When leadership in schools was not felt to be strong, or disinterested in the rights of students with cognitive disability, their experience of harm was seen to be greater and the resolution of those harms seen to be poorer.

When analyzing the lived experience of the twenty seven young people and their families who contributed to this research, a discord emerges between their experiences of harm, the responses provided by education providers, and the systemic structures they found available to support resolution of their abuse. It is clear in this research that the rights of students with cognitive disability to be safe at school were in many cases not upheld, or not upheld without vigorous advocacy.

All of these perspectives and experiences were expressed within a particular legal and policy framework. The framework of laws and policies in this context provide access to a range of remedies for students whose rights are breached, across discrimination, criminal and civil law, and in education, disability and child protection policy domains. However, much of this remained unknown to the majority of participants in this research.

The primary law reform finding of this project is not a need for new laws or policy, but better linkages between the existing frameworks. Better connecting education, disability and child protection at legal and policy points will improve rights information and access for students with cognitive disability who experience harm in and around school.

Better understanding of harm

Multiple perspectives of the experience of harm and abuse emerged in this study. There are significant gaps between the experiences of participants and current legal and policy frameworks. The views of students and families about the level and intensity of harm, the degree of concern shown by schools, and the success of strategies offered in response to complaints about abuse were, as expected, less positive than the views of key stakeholders about how well they were doing in supporting students to prevent and resolve situations of harm. There is little reflection in policy material of the well-established evidence that children and young people with disability are at significantly increased risk of abuse. None of the groups were aware to a significant degree of the legal and policy preventions and remedies available.

Addressing the barriers to keeping students safe

A series of barriers with systemic implications were identified in the research. Incidents of harm were often treated in isolation, rather than viewed as a pattern of behaviour. A focus on the diagnostic label of the student with disability, their behaviour or their 'vulnerability' at times prevented attention to the instigators of harm or abuse. There was little focus on looking to the cause of harassment, bullying and interpersonal harm to resolve it more completely for students. The opportunity to respond early and prevent harm escalating into more serious abuse was missed by education systems on multiple occasions. Appropriate policy and legislative frameworks were not applied in the early stages of abuse. Finally, there was a lack of shared learning from the experiences of students and their families, so that the same mistakes were repeated. These results are consistent with the findings of other large scale inquiries into abuse and disability hate crime (Smith, forthcoming).

In this research, little evidence was found of students and families accessing policy and legal support for prevention, early intervention, remedy or redress of harms. Their knowledge of the law and of legal and human rights around education appeared limited in many instances. Many were unclear about their rights in relation to complaint making, and found the process draining and difficult. In the eyes of families, success or otherwise of strategies to keep students safe were dependent more on relationships with key staff than on the enactment of policy. From the perspective of educators, a number of issues impacted on their capacity to implement policy, including training, the time to implement strategies and plans for students with complex support needs, and the willingness of all staff to involve students with disability in mainstream classes.

Promoting personal safety for students with cognitive disability

The relationships between a number of interviewees and schools had been compromised by the protracted difficulties in resolving students' problems with safety. Safeguards against this are needed, such as the creation of whole school cultures in which abuse and harm is not tolerated, robust complaints frameworks with openness to feedback, and strong advocacy support for both students and families.

Upholding the legal and human rights of students with cognitive disability

The importance of connecting the protection frameworks for children, people with disability and students cannot be overstated. This is particularly significant for children and young people with high and complex needs, who often engage with multiple service systems and providers. Not one student in this research had made use of criminal, civil or anti-discrimination law in relation to the harm they had experienced, although there were multiple instances in which they may have had reason to do so. National commitments to United Nations Conventions - to the rights of children to be protected, the rights of all people not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the rights of people with disability to be free from exploitation, violence and abuse and the right to safe inclusive education - need to be woven into policy and practice at state and local levels.

At a policy level, in this research the extensive amounts of guidance material available online was not (or not yet) being demonstrably translated into practice frameworks. The policy and practice material available through sites such as the Safe Schools Hub and Bullying No Way provides excellent input into taking a whole school approach to safety, developing resilience in students, creative and innovative ways to tackle bullying and harassment, and building partnerships with families, reflecting key policy documents such as the NSW Disability Action Plan and Every Student Every School. However, it was difficult to locate information in the level of detail needed to make a complaint or find out Department policy on abuse and neglect. For students with high and complex needs, there was little detailed information which would support practice change.

At a practice level, the experiences of many students and their families in this research did not reflect demonstrable uptake of this material. The tension between increasing workload, increasing complexity in students and available time which was mentioned by almost all educators may impact on the take up of these resources. The majority of key stakeholders did not discuss these key frameworks, relying instead on locally developed policy and practice responses to both complaints of abuse and harm, and to promoting safety at a whole school level.

1. About the project

This project aimed to generate knowledge to improve the access of students with cognitive disability to protection in the event of maltreatment, and to strengthen the implementation of their legal and human rights in school settings. To do this, we identified the range of protections currently available at law to these young people, conducted research to identify areas where they are not receiving due access to justice, and analysed this combined material to identify opportunities for improving law, policy and practice.

To give meaning to this aim for students and those who support them, we developed four core research questions to guide the project in working towards this aim:

- What characterizes the experience of harm of children and young people with cognitive disability in and around school?
- What are the barriers to keeping students safe?
- What promotes personal safety for children and young people with cognitive disability?
- How can their legal and human rights be upheld?

In order to develop an insight into possible law and policy reform opportunities, the project focused jointly on interviews with students, their families and other key stakeholders, and a review of law and policy. This report aims to identify implications for law and policy reform arising from the analysis of this research. It provides new information about the gaps and barriers facing children and young people with cognitive disability who experience abuse and harm in an educational context. Strategies for redressing gaps and barriers and supporting legal and policy change have been identified from the research, as have the strategies and tools students and their supporters have used to successfully avoid or address harm.

This report will be the focus of a seminar for key stakeholders, with the aim of critiquing the key findings of the research and progressing the emerging critical issues in policy and practice. A series of accompanying resources will be distributed to meet the information needs of each of the key stakeholder groups, with the aim of reducing the human rights and legal barriers for school students with disability who are experiencing harm.

It is our hope that the results of the project can be used to promote law reform and policy advocacy which makes schools and communities safer and more responsive to the needs of students with cognitive disability.



2. Background

This project was developed in response to an emerging trend in complaints about harm and maltreatment of students with cognitive disability made to the Australian Centre for Disability Law (ACDL); implications of forthcoming policy initiatives at State and Federal levels which may affect the ways in which schools and education authorities respond to the maltreatment of students with cognitive disability (such as Every Student, Every School and Local Schools, Local Decisions); and previous research, policy and law reform projects completed by researchers at the Centre for Children and Young People and lawyers at the ACDL.

It particularly builds from the outcomes of the 2009 Law and Justice Foundation project Rights Denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with a cognitive impairment (French, Dardell & Price-Kelly, 2010). This research investigated the barriers that people with cognitive disability encounter that prevent them from realising their human rights to freedom from abuse, neglect or exploitation in NSW. The project identified particular vulnerabilities and barriers to justice for children and young people with cognitive disability who experience harm, particularly assault, sexual assault, restrictive practices, and false imprisonment. The way in which reports of harm were responded to within, and between, agencies and organisations was a particular concern identified in the research.

The project also responds to information provided to us by stakeholders. Young people with cognitive disability told us in consultations about their lived experience of frequent harassment, bullying and intimidation and of restrictive practices in schools; education professionals (behaviour consultants) confirmed the need for the project; specialist and generalist legal services both related a steady stream of requests for advice on these issues; and a wide range of disability and family support organisations perceived this as a neglected area in need of attention.

The research which underpins the report was conducted in the NSW Northern Rivers region. The Northern Rivers includes the local government areas of Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley and Tweed. Approximately half the population is concentrated in the town centres of Tweed Heads, Murwillumbah, Ballina, Lismore, Yamba and Grafton while the other half reside in the 300 small villages and localities within the region. The Northern Rivers has 154 primary schools, 25 high schools and 25 central schools which span primary and secondary (Regional Development Australia, 2013). Significant diversity exists in terms of size of schools and communities, from single teacher schools in communities of less than 100 residents through to schools of over 1000 students in regional centres with populations of over 40,000. Three Local Government Areas within the region rank in lowest 20 scores for the state on the Index of Relative Socio-Economic Disadvantage (Regional Development Australia, 2013).

How many students have cognitive disability?

Children and young people with cognitive disability include those with intellectual disability, acquired brain injury, mental illness, specific learning disabilities, neurological conditions, and those on the autism spectrum. Cognitive impairment can be present when a child is born, or acquired later in life. It can impact on children and young people's capacity to concentrate, remember, react to emotions, formulate ideas, problem solve, and reason (Gray, Forell & Clarke 2009).

The lack of a common language for cognitive disability, and the way schools apply funding rules, makes it difficult to estimate how many students are in the 'target group' for this project, but it may be as high as 15% of the school population (NSW Legislative Council GPSC2, 2010). A total of 41,402 students with disabilities were enrolled in over 3,200 NSW schools in 2012. This figure does not include students with autism and mental health conditions, who were not counted in this data collection. Of these students, 87% were attending mainstream schools, either in regular classes or support units, and 13% attended schools for specific purposes (special schools or SSPs). More than 75% of students with confirmed disabilities or special needs in NSW attend state schools, and in 2009, more than 90% of these students had a cognitive impairment (NSW Legislative Council GPSC2, 2010; ABS, 2010).

However, data from the Australian Institute of Health and Welfare indicates that many students with disabilities were not provided with any special support in school (43% were not provided with additional support in 2006). In addition to students with confirmed disabilities, there are more than 97,000 students classified as having additional learning needs or learning difficulties, which includes students with cognitive disability. These students do not receive any funding for support.

The potential pool of students, including both those referred to by the education authorities as having disabilities and learning difficulties, is thus between 12% and 15% of the school population.



3. Literature review

The abuse and neglect of children and young people with disability is a longstanding and pervasive social problem. This harm in children and young people's lives ranges from chronic low level harassment and lack of appropriate care to extreme situations of criminal assault (Caldas & Bensy, 2014; Holzbauer, 2008; Reiter et al., 2007; Wendelborg & Tøssebro, 2010). It is underpinned by social and systemic practices and attitudes which set low expectations for children and young people with disability and which frequently leave them on the margins in both practice and policy (Higgins & Swain, 2010; Hoskin, 2010; Stalker & McArthur, 2012).

3.1 Prevalence of abuse

It is difficult to discuss the prevalence of interpersonal harm experienced by students with cognitive disability with any accuracy (Cashmore et al., 2008; Horner-Johnson & Drum, 2006; Stalker & McArthur, 2012). It is suggested that abuse is under-reported by children and young people with disability, for a range of reasons, including lack of support to make a complaint; not feeling they would be believed; not having the words to name the harm they are experiencing; and the feelings of intimidation and fear experienced by all children (although possibly heightened for children with disability who may be reliant on an abuser who also provides their daily personal support) (Briggs & Hawkins, 2005; Kvam, 2003; UN Secretary General, 2005). However, it is also difficult to compare research studies due to small, convenience sample sizes. The most reliable research evidence suggests that children and young people with disability experience higher incidences of interpersonal harm at school compared to their peers, and across multiple life domains are abused at approximately three times the rate of children without disability. (Caldas & Bensy, 2014; Jones et al., 2012; Reiter et al., 2007; Stalker & McArthur, 2012; Sullivan & Knutson, 2000). Students with cognitive disability or multiple disabilities including an intellectual or behavioural disability seem to be at the greatest risk (Humphrey & Symes, 2010; Kloosterman et al., 2013; Rowley et al., 2012; Turner et al., 2011).

3.2 Experience of harm in school

Students with disability experience high rates of bias-based bullying (Cappadocia et al., 2012; Carter, 2009; Felix et al., 2009; McLaughlin et al., 2010; Rose et al., 2011), often compounded by social isolation (Bossaert et al., 2012; Frederickson, 2010; Kloosterman et al., 2013; Rowley et al., 2012; Ytterhus, 2012). Chronic teasing and harassment impacts upon students' confidence, mental health and sense of belonging at school, reinforcing their loneliness and leaving them in an increasingly vulnerable social and emotional position (Bossaert et al., 2012; Prince & Hadwin, 2013; Rowley et al., 2012; Shtayermman, 2007; Vessey & Katherine, 2011). Further, studies suggest that bullying experienced by students with disability can often involve conditional friendship, manipulation, theft or violence (Cappadocia et al., 2012; Carter, 2009; Council for Disabled Children, 2010b; Holzbauer, 2008; McLaughlin et al., 2010). However, there is also evidence that students with cognitive or behavioural disabilities may be at increased risk of engaging in bullying behaviours themselves (Carter & Spencer, 2006; Christensen et al., 2012; Lodge, 2014a). Often these students are themselves also bullied, and are therefore referred in the literature as bully-victims (Lodge, 2014a; Swearer et al., 2012). This bullying behaviour may result as response to their own experiences of victimization, low self-control, low language ability or poor social skills (Carter & Spencer, 2006; Kaukiainen et al., 2002; Rose et al., 2011; Swearer et al., 2012), and act to further disrupt their sense of belonging and connection at school (Farmer et al., 2012).

In addition to harm resulting from bullying, students with cognitive disability experience other interpersonal harms at school, both intentional and unintentional. For example, children and young people with disability appear to be a greater risk of sexual abuse, whether by other students or teachers/care staff (Caldas & Bensy, 2014; Kvam, 2003). Other harms are perhaps less intentional, resulting from systemic school systems and administrative needs. For instance students describe having their movement and relationships with peers constrained by the preferences and administrative needs of staff (Hoskin, 2010; MacArthur, 2012; Salmon, 2013). Sometimes student's basic personal needs are highly compromised

in such situations, for instance Lindsay and McPherson (2012) highlight the example of a student with a communication impairment who was refused a button on his wheelchair to indicate he needed the bathroom, as the teacher felt concerned other children would misuse it and be distracted. One of the key findings of Lindsay and McPherson's study was that although many of these instances of exclusion were unintentional, institutional or teacher driven exclusion can result in abuse (such as the removal of the ability to communicate), and also influences the attitudes and behaviour of fellow students.

Importantly, the literature points towards other features in young people's environments, relationships and the cultures of their communities which may have a greater part to play in how vulnerable (or otherwise) they are to abuse and neglect than their impairment itself. For example, having autism does not on its own render a teenager vulnerable. However, a lack of social connections and networks, the absence of a trusted adult in their life, and caregivers who do not understand any individual communication methods they have do make them vulnerable. It is in the interaction between the person and the relationships and support systems they need to live a full and fulfilled life where the relationship between vulnerability and harm becomes very important (Robinson, 2012; MacArthur, 2012; Higgins & Swain, 2010).

3.3 What don't we know?

There are a number of gaps in knowledge that would help policy makers and ultimately schools better safeguard children and young people with disability. As mentioned above, it is important to gain a better understanding of the prevalence of the different types of interpersonal harms for students with cognitive disability specifically, including for those with high support needs who are often excluded from research participation (as was the case in the 'Australian covert bullying prevalence study,' Cross et al., 2009). This includes experiences of harm at levels more severe than negative interpersonal interaction such as sexual abuse and violence as well (Caldas & Bensy, 2014). It is also important to gain a better understanding of how interpersonal relations in schools come to bear beyond the school gate. For instance, a unique study explored bullying and aggression on school buses in the US (DeLara, 2008).

An increasing number of studies and reports are beginning to gather the perspectives of students with disability in relation to harm, bullying and inclusion or exclusion (AbilityPath.org, n.d.; Council for Disabled Children, 2010a; Hoskin, 2010; MacArthur, 2012; McMaugh, 2011; Northway et al., 2013; Robinson & Truscott, 2013; Savage, 2005; Worth, 2012). These aim to better understand the impact of interpersonal harms on the lives of students with disability and help to generate recommendations from the students about what might help reduce the harm as well as more effective strategies to help keep students with disability safe (Anti-Bullying Alliance, n.d.; Bourke & Burgman, 2010; Council for Disabled Children, 2010a; de Vet et al., 2012; MacArthur, 2012; Salmon, 2013). As a student in the UK Safe to Learn guidance about students with disability reminds, "You can find out what's best for us by involving us" (Department for Children Schools and Families, 2008, p. 21).

Increasing the quantity and breadth of studies exploring students' experiences is an important way by which to assist schools in safeguarding and responding to incidents of interpersonal harm involving students with disability. These studies are also critical in helping to uncover restrictive practices in schools, which are sometimes so systemic and unintentional that they may be largely unnoticed if the student or their family's accounts are not heard (Hoskin, 2010), and sometimes viewed by both schools and families as an inevitable part of having a disability (Robinson & Truscott, 2013). This is particularly challenging in instances where students have particularly high support needs, where their voice can be dependent on or overpowered by those of their carers, and particular creativity is required to design research methods matched to their communication abilities.

3.4 Responses to students' experiences of harm

Students with disability note that they are regularly not believed when reporting bullying at school, are told just to ignore the bullying or it is brushed aside as trivial or an accident (Bourke & Burgman, 2010; Council for Disabled Children, 2010a; Department for Children Schools and Families, 2008; Ferster, 2008). On the other hand, school responses can also be overly reactive, with no consultation with the student about how best to

respond, resulting in retaliation and further threatening behaviour from bullies, either immediately or at a later date (Council for Disabled Children, 2010a). In either of these situations the student being bullied is unlikely to disclose future bullying, and other students learn that children with disability are treated differently. There are also some reports of students with disability being removed from the classroom to guarantee their safety, and sometimes even asked to stay away from school for short periods of time (MacArthur, 2012), even though this contravenes rules about suspension. At times, bullying and ill treatment of students with disability, particularly students with autism and Asperger's, is characterised as an understandable and acceptable response to limitations in their social skills (Cappadocia et al., 2012; Carter, 2009).

More positive strategies focus on involving students in working out the best strategy and their preferred response to bullying behaviour. Often this might be extended to explore any changes to school systems that might help increase their inclusion, opportunities to build friendships and reduce their risk of victimisation (Department for Children Schools and Families, 2008). This is usually combined with immediate responses in which the bullies are called in for discussions with a teacher or principal and later required to take part in learning interventions and group therapy about the negative impacts of bullying and healthy social interactions (Lodge, 2014a). An example is the Method of Shared Concern approach, which is reported to have had positive success in Australian schools (Rigby & Griffiths, 2010). These interventions are often combined with reinforcement of whole-school bullying prevention messages (Department for Children Schools and Families, 2008; Lodge, 2014a; McLaughlin et al., 2011). Overall, students with disability need to know they will be listened to, believed, supported to overcome the bullying and that the bully will be supported to stop. Victimised students need to be supported to understand their own reactions and behaviour, and to build positive relationships with staff as well as friendships with other students (Council for Disabled Children, 2010a; Salmon, 2013).

As mentioned earlier, students with disability can also be the perpetrators of bullying or violent behaviour. Sometimes this is borne out of their frustration and anger at prolonged bullying or provocation, or alternatively through low control over their own behaviour (Department for Children, 2008; Faircloth et al., 2007). Students with cognitive or behavioural disability are commonly required to leave the classroom if their agitation levels get high (MacArthur, 2012), and are reported to be regularly suspended and sometimes expelled for their behaviour. Whilst bullying by children with disabilities is no more acceptable than bullying by other children, the British 'Safe to Learn' policies highlight that, "it should be made clear that their actions are wrong and appropriate sanctions imposed. However, for a sanction to be reasonable and lawful, schools must take account of the nature of the child's disability or SEN and the extent to which the child understands and is in control of what he/she is doing" (Department for Children, 2008, p. 33). Where other children's safety is being compromised and they are sustaining injury, how best to respond creates considerable ethical and administrative challenges and dilemmas for schools (Faircloth et al., 2007). Sometimes it is suggested that these students be referred to other services as they are "beyond the scope of school-based programs" (Lodge, 2014b, p. 11).

4. Legal and policy protections for students with cognitive disability

This section of the report provides a map of the legal and policy frameworks in place to protect students with cognitive disability who experience abuse, neglect or purposeful harm from others in and around school. This is a multi-jurisdictional area, and it is a complex task to develop a clear picture of the full entitlements of students in both legal and policy areas. While we have endeavored to provide a clear and comprehensive picture of the legal and policy landscape, this should be read as illustrative of the current climate, rather than a complete guide to all available remedies.

4.1 Legal context

A framework of legal protections exist to uphold the rights of students with cognitive disability. These are embedded in

- Human rights
- Anti-discrimination law
- Criminal law
- Civil and personal injury law
- Child protection law

4.1.1 Human Rights law

Several protections are available to students with cognitive disability under laws grounded in human rights. Australia is signatory to all of these Conventions, and Australian laws are compliant with the Articles of the Conventions. However, as noted by French, Dardell and Price-Kelly (2010), while some elements of the *Convention on the Rights of Persons with Disabilities* (2006) may already be reflected in Australian legislation (either in part or full), many are not, including many elements of the CRPD which relate to freedom from abuse, neglect and exploitation.

The right to an education

The right to an education is the inalienable human right of every person, whether it be child or adult, to have the opportunity and ability to participate in the education system equally (Jackson & Varnham, 2007). This fundamental right is incorporated into various international instruments including *The Universal Declaration of Human Rights (Article 26)* (1989); *The International Covenant on Economic, Social and Cultural Rights* (1966); and *the United Nations Convention on the Rights of the Child* (1989).

While the right to an education has been included in longer standing Conventions for many years, the more recent introduction of the *Convention on the Rights of Persons with Disability* (2006), Article 24 has introduced an expectation of inclusive education:

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual's requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

This right is an economic, social and cultural right, and what is termed a progressively realizable right. This means that governments must work to the maximum of their available resources to progressively implement the full right over time.

Freedom from exploitation, violence and abuse

Article 16 of the *United Nations Convention on the Rights of Persons with Disability* protects against all forms of gender and age-based violence against people with disability, both within and outside the home. It includes measures to ensure that exploitation, violence and abuse is identified, investigated and where appropriate prosecuted, and that victims are provided appropriate support to promote their physical and psychological recovery. Further, it specifies that in order to prevent the occurrence of all forms of abuse, all facilities designed to serve people with disability must be effectively monitored by independent authorities.

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment

The United Nations Convention on Human Rights at Article 5 includes the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. *The United Nations Convention on the Rights of Persons with Disability* also includes this right at Article 15.

The right for children to be protected

The right not to be subjected to torture or cruel treatment also extends to the protection of the child when being cared for, which is illustrated by the *United Nations Convention on the Rights of the Child*. Article 19 states that: 'State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'

The right for children to have their voice heard

The United Nations Convention on the Rights of the Child at Article 3 provides for all children to have their views heard in matters affecting them.

4.1.2 Anti-Discrimination Law

Equal access to education for all students, including students with disability, free from discrimination, is the first-stated goal of Australian education (Cumming & Dickson, 2013). Australian federal disability discrimination law, the Disability Discrimination Act 1992 (Cth), Disability Discrimination Regulations 1996 (Cth) follows the UN Convention on the Rights of Persons with Disabilities, with the Federal Disability Standards for Education 2005 (Cth) enacting specific requirements for education.

Disability Discrimination Law

Federal (Commonwealth) and state disability and anti-discrimination legislation sets out a framework for the inclusion of people with a cognitive disability in Australia. For young people with cognitive disability, affirming their right to an education goes hand in hand with being free from all forms of discrimination.

According to the Australian Human Rights Commission, more complaints are made about discrimination in education on the grounds of disability than on the basis of any other attribute protected by anti-discrimination laws. For instance, 6% of complaints lodged under the DDA in 2012-13 concerned education (Australian Human Rights Commission, 2013). During the same time period 5.2% of all complaints lodged with the NSW Anti-Discrimination Board under the Anti-Discrimination Act 1977 (NSW) involved education, with disability being the most common attribute (Anti-Discrimination Board of NSW, 2013).

Federal Laws

The Disability Discrimination Act 1992 (Cth) (DDA) applies nationally. It is overseen by the Australian Human Rights Commission (AHRC). The DDA makes some areas of discrimination on the basis of disability unlawful. It aims to eliminate discrimination against people with disability, promote community acceptance of the principle that people with disability have the same fundamental rights as all members of the community, and ensure as far as practicable that people with disability have the same rights to equality before the law as other people in the community.

The Australian Human Rights Commission Act 1986 (Cth) sets out how to make a complaint about breaches of the DDA. Accompanying regulations list additional grounds that constitute discrimination under the Act. The legislation gives a person the right to complain about discrimination and unfair treatment by Federal agencies that is in breach of the Convention on the Rights of Persons with Disabilities and other instruments.

The DDA divides disability discrimination into two categories: direct discrimination and indirect discrimination. Section 5(1) of the Act defines direct discrimination as a person (the discriminator) discriminates against another person because they have a disability and treats or proposes to treat the person less favorably than the discriminator would treat a person without the disability in circumstances that are not materially different. Section 5(2) of the Act also provides that the discriminator also discriminates against another person if they do not make reasonable adjustments for the person and fail to make these adjustments.

Indirect disability discrimination occurs when the discriminator requires, or proposes to require the aggrieved person to comply with a requirement or condition that the discriminator sets out and because of their disability the aggrieved person does not or would not comply. Thus the requirement is disadvantaging the aggrieved person (DDA s 6(1)). Also, if the discriminator wants the aggrieved person to comply with a requirement and they can only comply if the discriminator makes reasonable adjustments and the discriminator fails to make these adjustments then this is likely to disadvantage the aggrieved person with the disability (DDA s 6(2)).

Discrimination law in education

Young people with cognitive disability have the right to study at any educational institution in the same ways as any other student. Section 22 of the DDA makes it against the law for an educational authority to discriminate against someone because they have a disability. This includes all public and private educational institutions, primary and secondary schools, and tertiary institutions such as TAFE, private colleges and universities.

The DDA protects people with a disability against discrimination in education in both admission and access:

Admission:

Section 22(1) of the DDA states that 'it is unlawful for an educational authority to discriminate against a person on the ground of the person's disability: by refusing or failing to accept the person's application for admission as a student; or in the terms or conditions on which it is prepared to admit the person as a student.'

Admission was explored in *Hills Grammar School v Human Rights and Equal Opportunity Commission* due to the refusal of the school to accept an application from Scarlett Finney, a six year old child with spina bifida. The application to the school disclosed her disability as well as the need for level walkways and wheelchair access. In turning down Scarlett's application, the school stated that they did not have adequate resources to reach Scarlett's needs.

Scarlett's parents then lodged a complaint with the then Human Rights Equal Opportunity Commission. The Commissioner found that Hills Grammar had unlawfully and directly discriminated against Scarlett, and that the defence of unjustifiable hardship had not been made out (*Finney v Hills Grammar School* [1999]). The school sought judicial review of the Commissioner's decision, which was upheld, and damages to Scarlett were later awarded for the loss of educational opportunity of 7 years at the school.

Access:

The *Disability Discrimination Act* states at section 22(2) states that: 'it is unlawful for an educational authority to discriminate against a student on the ground of the student's disability: by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or by expelling the student; or by subjecting the student to any detriment.'

The exclusion of students on the ground of disruptive or aggressive behaviour has been linked to discrimination issues both directly and indirectly (Rees, Rice & Allen, 2014, pp 7.3.3.8). Cases involving exclusion from school on the ground of behaviour involve arguments by complainants that their behaviour is due to their disability. For example, NSW students Daniel Hoggan and Ryan Minns argued that their behaviour at school had a direct relationship with their disabilities, which included intellectual disability caused by brain damage as a young child for Daniel, and ADHD and Asperger's syndrome in the case of Ryan. They both had been accepted into mainstream schools, but were excluded after a pattern of behaviour causing an unsafe environment for themselves and others in the school environment.

In Daniel's case, two questions were presented by s 5(1) of the Act. First, how in those circumstances would the educational authority have treated a person without the student's disability? (*Purvis v New South Wales (Dept of Education and Training)* [2003] at 225). Second, if the student's treatment was less favourable than the treatment that would be given to a person without the disability, was that because of the student's disability? Daniel's behaviour was violent and disruptive in the school environment. Thus, just like any other student without a cognitive disability who is violent and disruptive, he was expelled from the school because of his behaviour and its dangerous effect on the school environment, making it unsafe for Daniel, students and teachers. In contrast to the majority judgment in *Purvis*, a dissenting view was put that the school could have done more to assist Daniel, considering the absence of the behavioural manifestation of his 'disorder' from the definition of disability in the Act, the lack of obligation to provide reasonable obligation for people with disability in the Act, and the comparison of Daniel's circumstance to a student without disability, rather than a like peer.

This case has been influential in reviews of the DDA, (Australian Government Productivity Commission, 2004) and many have noted that the definition of disability should be amended to include behaviours that are symptoms or are manifestations of disability. This approach also follows the Human Right Equal Opportunity Commission recommendations and if followed, could have the effect of changing the law as applied in Purvis (Jackson & Varnham, 2007, p 127).

The courts have so far failed to consider arguments based around the significance of inclusive education for students with disability. This is problematic because the courts prefer an approach which prioritises the physical safety of students in the educational environment over human rights entitlements to inclusive education. Although a safe education is imperative for the safety of students and teachers, the question still remains as to whether enough is being done to maintain the rights of children with a disability in education. The High Court's decision upholding the exclusion of Daniel Hoggan from his mainstream high school has caused significant concerns amongst advocates of inclusion and the parents of children with a disability planning for the education of their children in mainstream classrooms ((Rees, Rice & Allen, pp 7.338, 2014).

Commonwealth Disability Standards for Education 2005 Cth

The Disability Standards for Education 2005 are enacted under Section 31 of the *Disability Discrimination Act 1992* (Cth) and form subordinate legislation of the *Disability Discrimination Act 1992* (Cth). They operate within the context of other Federal, State or Territory legislation, which includes anti-discrimination, education, building, planning and occupational health and safety laws.

The Attorney General's Department describes the purpose of the *Disability Standards* as seeking to 'ensure that students with a disability are able to access and participate in education and training free from discrimination and on the same basis as other students'. For young people with cognitive disability, the standards make clear the obligations of schools and the rights of students with disability under the *Disability Discrimination Act 1992* (Cth). The standards emphasise that educational providers must make reasonable adjustments to accommodate a student with a disability, except in circumstances that would impose unjustifiable hardship on a person or educational organisation.

If a person acts in accordance with the Standards, they comply with the *Disability Discrimination Act 1992* (Cth). An education provider must comply with the Standards or it will be acting unlawfully. A breach of the Standards will generate a right of complaint to the Human Rights and Equal Opportunity Commission (HREOC)/ Australian Human Rights Commission under the relevant provisions of the *Disability Discrimination Act 1992* (Cth) and the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (Australian Government, n.d.).

Education providers must follow each standard, including:

- Making reasonable adjustments for students with a disability
- Giving prospective students with a disability the right to enrol in the educational institution and ensure that the prospective student with a disability or their associate is consulted about reasonable adjustments
- Making certain that students with a disability are able to participate in courses or programs on the same basis as students without a disability
- Ensuring that courses and programs are designed in such a way as to enable students with a disability to participate in learning experiences
- Ensuring the ability for students to access support services is available on the same basis as students without a disability
- Developing and implementing strategies and programs that are designed to eliminate harassment and victimisation of students with a disability
- Non-discrimination on the ground of disability to a person or their associates.

It is not unlawful for an education provider to fail to comply with these Standards if it is able to demonstrate that to comply would impose 'unjustifiable hardship' in terms of s 11 of the *Disability Discrimination Act 1992 (Cth)*

In 2010, the Australian Government commenced the Review of the Disability Standards for Education 2005. In 2012 the Review identified significant problems with the implementation of the Standards relevant to the safety of students, finding the 'lack of accountability for compliance with the Standards is a significant impediment to their overall effectiveness' (2012, p. viii). Among the findings were:

- No accurate way to identify systemic barriers to access and participation across the education sectors
- Weak accountability frameworks supporting the obligations and requirements under the Standards
- A complex and inaccessible complaints process which parents, associates and students were reluctant to use. Limited options were available to complainants if conciliation failed
- Few consequences for education providers in breach of the Standards or failing to act on complaints
- Limited accessible practical advice and training on implementing the Standards for educators about identifying individual needs, developing individual education plans and providing appropriate support to achieve learning outcomes
- Limited access to qualified professionals and limited ongoing professional development in inclusive education
- Insufficient focus in the Standards on measures for promoting greater inclusion and removing subtle and indirect discrimination.

The recommendations covered themes of awareness raising, improved clarity; access and participation, discrimination and inclusion; complaints, accountability and compliance and contemporary education practice and related issues. Of particular relevance is the recommendation to develop online good practice guides for education providers on addressing indirect discrimination, bullying, harassment and victimisation experienced by students with disability; managing challenging behaviour, student safety and the use of restrictive practices with students with disability; and strategies for meeting the needs of students with disability who have complex and multiple needs. The review further recommended that the Attorney-General's Department give consideration in the consolidation of Commonwealth anti-discrimination laws to issues raised during the review concerning compliance and investigation of systemic breaches and the complaints process and development of a range of alternative dispute resolution options including mediation and arbitration.

Discrimination Law in the States

All Australian jurisdictions regulate discrimination in education by prohibiting discrimination on various grounds by educational authorities. The term 'educational authority' has been defined consistently in most federal, State and Territory statutes as 'a person or body administering a school, college, university or other institution at which education or training is provided'¹.

As an example of state law, the Anti-Discrimination Act (ADA) applies only in NSW and is similar to the Commonwealth DDA. It is overseen by the Anti-Discrimination Board.

¹ SDA (Cth) s 4(1); DDA (CTH) S 4(1); ADA (Cth) s 26(4) (which defines both educational authority and educational institution); ADA (NSW) S 4(1); ADA (QLD) s 4; EOA (SA) s 5(1); EOA (Vic) s 4; EOA (WA) S 4(1); DA (ACT) s 4(1); ADA (NT) s 4(1).

4.1.3 Criminal law

A number of the harms experienced by students with cognitive disability at school are criminal offences, including assaults, harassment and intimidation, and stalking. In the discussion below the Crimes Act 1900 (NSW) is used as an example.

Criminal responsibility

A threshold question when considering the criminality of behaviour is whether the offender is deemed by law to be responsible for his or her actions. Criminal responsibility is determined solely on the basis of age (Butler, Campbell & Kift, 2009). At common law, the age of criminal responsibility is 7 years. This age has been raised by statute in all Australian Jurisdictions to 10 years. If a bully is under the age of 10 years, according to legislation they will not be criminally responsible for their actions. If the bully is aged 10-14 years of age and the prosecution can prove beyond reasonable doubt that child had the knowledge that he or she knew it was a wrong act of some seriousness, not just 'childish mischief'². Anyone over the age of 14 years old, and has the requisite capacity can be held criminally liable for their conduct.

Young people with cognitive disability may not have the capacity to understand the ramifications of their behaviour. They also may be unfit to plead and/or unfit to be tried or be found not guilty by reason of mental illness/intellectual disability. Some people with cognitive disability and psychiatric conditions are not capable of forming an intention to commit legal wrong. This means that they have a 'diminished responsibility' (*Crimes Act 1900* (NSW), s 23A). Thus, if a young person did not have the capacity to understand, they would not be held criminally liable for their actions or the charge could be downgraded.

Assaults and grievous bodily harm

A common assault may be committed by the threat of force, which puts the target in fear of imminent violence. Actual direct or indirect application of force is not necessary. This offence exists in all states and territories. Across all jurisdictions there are minor differences but the main elements require:

- The offender threatens or attempts to apply force
- The threat must be evidenced in some way
- The threat creates an apprehension in the victim of present or immediate harm by reason of the offender's apparent ability to carrying out the threat.

Assault occasioning actual bodily harm (s 59, Crimes Act 1900 (NSW)) makes it an offence to assault any person causing actual bodily harm. Section 61 of the Crimes Act makes it an offence to assault any person, even if the assault does not result in bodily harm. Sections 33 and 35 deal with the intention to wound a person in the course of an assault.

Sexual offences are addressed in Part 3, Division 10 of the Crimes Act. These offences recognize a number of aggravating circumstances which increase the culpability of the offender and the subsequent penalty. One of these circumstances (sections 61J, 61O, 80C) is where the alleged victim has a cognitive disability.

² C v DPP [1996] 1 AC 1 and see Criminal Code Act 1995 (Cth) s 7(1),(2); Crimes Act 1914 (Cth) ss 4M, 4N; Criminal Code Act 2002 (ACT) ss 25-26; Children (Criminal Proceedings) Act 1987 (NSW) S 5; Criminal Code (NT) ss 38(1),(2); Criminal Code 1989 (QLD) S 29(1),(2); Criminal Code Act 1924 (Tas) s 18(1),(2); Children and Young Persons Act 1989 (Vic) s 127; Criminal Code Act Compilation Act 1913 (WA) s 29.

As noted by French, Dardell & Kelley, the Crimes Act does not specify aggravating circumstances for common assault as for sexual offences and

There does not appear to be any principled reason for accepting that cognitive impairment ought to be an aggravating factor with respect to sexual offences but not other assault. Persons with cognitive impairment are more likely to experience assault, and to experience intensified harm from such assaults, and for the same reasons this is true for sexual assault (they are more likely to be victims as a result of predation or abuse of power or support relationships, are less likely to be able to avoid or resist assault, and are more likely to suffer physical and psychological harm (2010, p63).

In 2011 abuse charges were dropped against an Adelaide school bus driver who was accused of abusing children with intellectual disability (Haxton, 2011). The 57-year-old-man escaped trial because prosecutors were concerned the victims could not adequately communicate what had happened to them due to their cognitive impairment. Seven children with intellectual disability between the age of six and thirteen were allegedly sexually abused by the bus driver. The young people with intellectual disability had their case heard at the Royal Commission into Institutional Responses to Child Sexual Abuse and the interim report from the Royal Commission said that the St Ann's Special School case, where pedophile Brian Perkin abused intellectually disabled students, shows it is vital that staff and parents learn about perpetrator's methods and possible signs of abuse.

Bullying and harassment

In Australia, there is little legislation directed towards bullying (Australian Human Rights Commission, 2013). Some elements of bullying may fall under stalking, harassment and other laws. Other elements such as being bullied on the basis of age, sex, religion or disability are potentially covered under the Commonwealth anti-discrimination laws.

New South Wales is the only Australian jurisdiction to enact legislation specifically directed at bullying in schools (Butler, Campbell & Kift, 2009). Section 60E of the Crimes Act 1900 (NSW) makes it against the law for a person who 'assaults, stalks, harasses or intimidates any school student or member of staff of a school while the student or member of staff is attending school, although not bodily harm is occasioned, is liable for imprisonment of 5 years' (Crimes Act 1900 (NSW) S 60E(1)). 'A person who assaults a school student or member of staff of a school while the student or member of staff is attending a school and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years' (Crimes Act 1900 (NSW) S 60E(2)). The Act also covers grievous bodily harm and recklessness as to causing actual bodily harm to a school student or member of staff where liability extends to 12 years (Crimes Act 1900 (NSW) S 60E(3)). This legislation does not include face-to-face bullying while people are on their way to or from school or cyber bullying.

Stalking and intimidation

Stalking and intimidation is also covered by the Crimes (Domestic and Personal Violence) Act 2007 in NSW (Crimes (Domestic and Personal Violence) Act 2007, s 13). Stalking is where a person receives repeated attention that frightens and intimidates him or her. If a person stalks or intimidates with intent to cause fear of physical or mental harm they can be imprisoned for up to 5 years and fined up to \$5,500.

In NSW a young victim with a cognitive disability could take out an Apprehended Personal Violence Order (Crimes (Domestic and Personal Violence) Act 2007, s 18). This relates to the protection of a person where there is no domestic relationship between the parties.

4.1.4 Civil and personal injury law

The education environment is a microcosm of society where many powers, duties, rights and responsibilities all operate together to ensure an effective and efficient system that is safe for everyone. Sometimes, one individual's rights may be affected when another is trying to assert their rights. In determining liability, it is crucial to determine whether the party at fault is liable in negligence directly or vicariously through their careless action or inaction (Jackson & Varnham, pp 12.3, 2007).

While the fundamental rule in relation to negligence is that each case is to be decided on its facts, there are basic principles that are applied to any potential negligence action. It is now well established that in order for liability in negligence to be found, there are four elements that must be proved (Jackson & Varnham, pp 12.3, 2007).

These are:

1. The school authority or the teacher owed to the student a duty of care
2. The school or teacher fell below the standard of care that is required in such a situation, so that they were in breach of the duty of care; and
3. The breach of the duty of care caused the injury to the student and the injury was not caused by some intervening factor; and
4. The student's injury is compensable at law

Duty of Care

All the Education Acts in the Australian states and territories provide for compulsory education of children between certain ages. Children are legislatively required to be enrolled at and attend a school during that prescribed period. Parental responsibility is enforced by the imposition of penalties on parents for failing this requirement (Stickley, 2013). By law parents are required in most Australian jurisdictions to have their children attend full-time education until the age of 16 or 17 years (*Education Act 1990* (NSW) S 21B(3)).

Scope of Duty

The scope of the duty of care is to exercise reasonable care and supervision to protect students from foreseeable risks of injury (*Geyer v Downs* (1978) & *Commonwealth v Introvigne* (1982)). In *H v New South Wales* [2009] NSWDC 193 the plaintiff was stabbed by a fellow student on the school grounds. As the teachers were aware of the conduct between the students prior to the stabbing, the risk to the plaintiff was foreseeable and within the school's duty of care.

When the student is at school

When a student is at school, the school is in control and acting in place of the parent or guardian: *Ramsay v Larsen* (1964) 111 CLR 16; [1964] ALR 1121. *Richards v Victoria* [1969] VR 136 at 138 explained that: The reason why the duty would be imposed is because a young child needs protection against the conduct of others, or indeed of themselves which could potentially cause them injury. The duty is also imposed because the child is being cared for during school hours and the control and protection of their parent is placed under the control of the principal who is in position to exercise authority to make sure that the child is under reasonable care and is not at risk of injury.

Breach of duty of care

For an action to succeed, it needs to be established that the harm to the student was a result of the breach of the duty of care.

The school's duty of care is not limited to when the student is on school premises within the set school hours. For example, *Geyer v Downs* (1978) established that the school was liable to the plaintiff who was injured on the school grounds before school had started. It was held that if at the time the relationship

of 'school master and pupil' existed, the duty of care would apply. In *Abraham BHT Abraham v St Mark's Orthodox Coptic College (2006)* the school was held negligent for not providing an effective system of supervision from 7.45am, when a significant number of students commenced arriving at the school, until 8.30am when classes commenced.

In *Gugiatti v Service College Council Inc (2004)* the school was held to owe a duty of care to its students while on a school retreat which took place off school grounds and outside of school hours. Similarly, in *Roman Catholic Church v Koffman (1996)* the school's duty of care was found to extend to supervising the bus stop outside the high school.

In 2001 (*Graham v State of New South Wales (2001)*), a school in NSW was found not liable for injuries to a student with disability who was hit by a motor vehicle when crossing a busy road a kilometre from school, when walking to school by herself. The allegation against the school was that it should have provided a bus, but the New South Wales Court of Appeal held that the school had discharged its duty by informing the parent at the start of the year that the bus service was no longer being provided, and that the parent should make appropriate arrangements.

School's non-delegable duty

The vulnerability of children and the degree of control exercised over them by school authorities has resulted in the school authorities' duty of care being classified as a non-delegable duty of care. The High Court of Australia in *Commonwealth of Australia v Introvigne (1982)* established this notion that the direct duty on schools ensures that reasonable care is taken for the well-being of all students. This non-delegable duty however was not extended in *New South Wales v Lepore: Samin v Queensland: Rich v Queensland [2003]*. This was due to the fact that the High Court was not willing to extend this principle to the criminal conduct of the teachers, the conduct being the sexual abuse of students by teachers.

Vicarious liability

The liability of school authorities is also likely to be based on vicarious liability for the torts of their teachers as school employees. Despite the High Court's concerns about the lack of clear guidelines for vicarious liability, there is still no coherent test to apply in determining whether an intentional tort is within the course of employment (Rees, Rice & Allen, pp 20.43 2014).

Standard of care for plaintiffs with cognitive disability

The particular requirements and limitations of a child with a disability do not alone lead the court to adopt a higher standard (Jackson & Varnham, pp. 12.17, 2007). In *Kretschmar v The State of Queensland (1989)*, a young student with an intellectual disability was seriously injured during a game of "Rob the Nest" at the age of 13 years old. The judges, although sympathetic to the plight of the boy, did not find in his favour. They accepted that the game had been well supervised and that the accident was most unusual and could not have been foreseen.

In *Withyman v State of NSW and Anor [2010]*, the District Court held that a teacher who seduced a pupil she had come to know at school, even though the acts of intimacy occurred outside of the school, was still liable for breach of duty of care to the student, although the school was not vicariously liable. The student in this case had significant behavioral issues and also personality problems, and the teacher's duty to take reasonable care for the welfare of the student was higher than normal as she was aware of his impairments and knew the student was vulnerable.

Causation

For negligence to be proven, it is necessary to prove a breach of the requisite standard of care, and also that the breach caused the injury. The Civil Liability Acts from all jurisdictions contain the provision that negligence must be a 'necessary condition for the occurrence of harm'³.

³ Civil Liability and Civil Wrongs Acts: NSW s 5D; Vic s 51; Qld s1; WA s 5C; SA s34; Tas s13; ACT s 45.

Student's loss must be compensable at law

Having determined who is liable in the educational setting, the question then relates to the extent of the harm for which the defendant should compensate the plaintiff. Where negligence is proven, a plaintiff may be compensated for physical injury which was caused, and which was probable, as a result of the defendant's action or inaction (Jackson & Varnham, pp. 12.23, 2007). In NSW s 5D(4) of the Civil Liability Act states that when 'deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty'. Thus, the court assesses the school's responsibility for the harm of the child with cognitive disability and decides whether the responsibility should be imposed on the school.

School authorities may be liable to pay damages to students if they suffer injury through an act of bullying. It was found in *Cox v State of New South Wales [2007]* that the school was liable as the bullying conduct towards a young boy at the primary school was not only foreseeable, but the school had been give repeated notice of the harm suffered. As a consequence, the court found that it was necessary that the school take greater than normal steps to eliminate the bullying in this case. The court further accepted expert evidence as to the need for schools to implement effective anti-bullying programs, including educating staff and students; the enforcement of strict policies; a management plan for eradicating bullying and the involvement of students as active participants in anti-bullying committees.

4.1.5 Child protection law

In NSW all educational institutions are responsible for the care and protection of children under the *Children and Young Persons (Care and Protection) Act 1998* (NSW). Also under the Act is a mandatory reporting requirement which details the legal requirements in relation to reporting knowledge or suspicions of situations where a child is at risk. Mandatory reporting is the term that is used for a statutory obligation to report known or suspected cases of abuse to child protection agencies as soon as possible after gaining knowledge or becoming suspicious. For example, in New South Wales, there is a duty on the school principal to notify the Ombudsman of any suspected abuse by staff and thus the Ombudsman oversees the investigation (Ombudsman Amendment (Child and Protection and Community Service) Act 1998 (NSW) S 25c).

The Children and Young Persons (Care and Protection) Act also regulates the voluntary and compulsory out of home care system for children and young people in NSW. This function rests in a Children's Guardian, established under the Act.

4.1.6 Application of other laws to students' lives

Anecdotal evidence suggests that a range of other legislation is applied to the lives of students with disability, affecting their schooling. For example, students with behaviour issues can be categorized as a risk, bringing into play the NSW Work Health and Safety Act (2011). It is beyond the scope of this report to analyse all of these laws, although important to recognize that they may be brought to bear in a discriminatory manner.

4.2 Policy context

The policy analysis was conducted by searching for relevant policy on departmental websites, keyword internet searching, and by following the recommendation of key stakeholders who were interviewed in the framing stage of the research. It is quite possible that specific policy documents have been missed in this search. It is notable that a number of policy documents were not prominently displayed, and difficult to locate.

There are a wide range of policies, at both national and state levels, relating to safety at school, including those focused on inclusion, reducing bullying and harassment, improving wellbeing and targeting problem behaviour. A number of broad policies include students with disability tangentially in their aspirations, but less detailed support for schools, parents and students is evident at a state, regional and school level. For instance, the Melbourne Declaration on Educational Goals for Young Australians (MCEETYA, 2008) is considered by many a central policy document. Its first goal is to “provide all students with access to high-quality schooling that is free from discrimination’ (p.7).

4.2.1. National policy

National Disability Strategy

The Convention on the Rights of Persons with Disabilities requires countries to establish and designate a framework to promote, protect and monitor implementation of the CRPD. The National Disability Strategy (NDS) is the mechanism to ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers (Attorney General’s Department, n.d). The NDS contains a strategy on learning and skills, focused on ensuring the outcome that ‘people with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs’ (COAG, 2010, p. 53). Areas identified for future action in the strategy include reducing barriers into education for children with disability; transition planning (both into school and from school into further education or work); developing innovative learning support; and responding the outcomes of the review of the Disability Standards.

Australian Education Act

The Australian Education Act (2013) legislates Commonwealth funding to schools. It establishes a needs-based funding model which provides a base amount of funding per student, and additional loadings for students and schools requiring extra support.

Australian Professional Standards for Teachers and Principals

The Australian Professional Standards for Teachers aim to establish nationally consistent benchmarks for teaching across experience levels, with students of diverse abilities and in multiple settings. Across the seven standards, a number relate either specifically to students with cognitive disability, or have application to them:

- 1.5 Differentiate teaching to meet the specific learning needs of students across the full range of abilities
- 1.6 Strategies to support full participation of students with disability
- 4.4 Maintain student safety
- 7.1 Meet professional ethics and responsibilities
- 7.2 Comply with legislative, administrative and organisational requirements
- 7.3 Engage with the parents/carers
- 7.4 Engage with professional teaching networks and broader communities

The Australian Professional Standards for Principals aim to clearly define the role of Principals and make explicit the role of school leadership in improving learning for students. The five professional practice areas have particular relevance in creating whole-school safe cultures, preventing harm of students, and responding to concerns and complaints:

1. Leading teaching and learning
2. Developing self and others
3. Leading improvement, innovation and change
4. Leading the management of the school
5. Engaging and working with the community

National Safe Schools Framework

The National Safe Schools Framework adopts a whole school approach to safety and wellbeing, and establishes nine core principles for safe and supportive school communities which promote student wellbeing and develop respectful relationships. It applies across all Australian schools, and was revised in 2011 after first being developed in 2003. The Framework describes a safe and supportive school as one in which:

the risk from all types of harm is minimised, diversity is valued and all members of the school community feel respected and included and can be confident that they will receive support in the face of any threats to their safety or wellbeing (2011, p.2).

The nine elements of the Framework are:

1. Leadership commitment to a safe school
2. A supportive and connected school culture
3. Policies and procedures
4. Professional learning
5. Positive behaviour management
6. Engagement, skill development and safe school curriculum
7. A focus on student wellbeing and student ownership
8. Early intervention and targeted support
9. Partnerships with families and community

These elements are comprehensively articulated through the new National Safe Schools Hub, a website which includes a large volume of resources for schools, parents and students, under each of the element areas, as well as an audit tool for schools, and online learning modules for teachers and school leaders, specialist professionals and pre-service teachers. Students with disability are included in holistic approaches (such as creating inclusive school cultures), and in some resources such as short videos which discuss specific support and strategies for students with additional needs. As a group who comprise a significant percentage of the school community, there is less recognition of their particular needs and aspirations than might be expected in the otherwise comprehensive 'key characteristics' which gives valuable detail on each element.

4.2.2 State policy

At the NSW state level, there are a number of policies, guidelines and websites relating to bullying (see NSW Department of Education & Communities, 2011a; NSW Department of Education & Communities, n.d.). However, akin to the national documents, most do not highlight students with disability as being particularly at risk of involvement in bullying. The support pamphlet entitled, 'Bias Based Bullying,' is an example of a number of policy documents which address areas of considerable relevance to students with cognitive disability, but do not include students with disability as a group who experience ill-treatment based on prejudice. It states:

Those involved in responding to incidents of biased based bullying should state that the behaviour is, for example, based on racism, sexism or homophobia and discuss why the behaviour is offensive. The message that the school community finds bias based bullying unacceptable should be consistently reinforced (p.1).

NSW Disability Action Plan

The NSW Department of Education and Communities *Disability Action Plan 2011-2015* is the Department's plan for continuous improvement in engaging with people with disability in education (NSW Department of Education & Communities, 2011b). It offers a number of strategies for improving the safety of students with disability at school, including awareness raising for new staff and principals to ensure the rights of students under the Disability Discrimination Act and Disability Standards for Education are met, improving the accessibility of complaints mechanisms, and training for staff in handling of complaints. As part of the plan, additional professional learning for staff about rights has been developed (an online module), and an anti-bullying plan for schools has been developed and released. Under the Plan, the initiative *Every Student, Every School* aims to provide better learning and support for students with disability in NSW public schools through focusing on professional learning and support for teachers and support staff in regular classrooms, increasing access to support from specialist teachers when needed, increasing skills in individual support planning, and better disseminating the specialist skills of personnel in special schools.

The policy landscape across the other states and territories appears similarly mixed. Every state education department has an anti-bullying policy, a number of which also address harassment and violence. ACT, NT, Tasmania and WA appear to offer little guidance in relation to students with disability and safety / bullying. The South Australian Department for Education and Child Development requires all schools to have an 'Anti-Bullying and Harassment Policy' and in its supporting audit encourages consideration of the needs of students with disability (South Australian Department for Education and Child Development, 2005). Similarly, the Queensland based-document 'Working Together: A toolkit for effective school based action against bullying' (Queensland Schools Alliance Against Violence, 2010), includes a section about students with disability and bullying, and states that this area should be 'specifically covered in anti-bullying policies' (p. 36). In the Queensland state policy, 'Safe, supportive and disciplined school environment' (Queensland Government Department of Education Training and Employment, 2014) it notes the importance of taking into account students' individual circumstances (including disability) when applying disciplinary consequences (p.4).

The Victorian policy landscape offers stronger consideration of the needs of students with disability. The Bully Stoppers website (Victorian Government Department of Education and Early Childhood Development, 2014) specifically discusses bullying in regards to students with disability. Similarly, the document 'Protecting the safety and wellbeing of children and young people' (Victorian Government Department of Education and Early Childhood Development & Department of Human Services, 2010) has a sub section which discusses children with disability. Finally, the 'Effective Schools are Engaging Schools' policy guidelines (Victorian Government Department of Education and Early Childhood Development, 2009) discusses complying with the Disability Discrimination Act 1992 and the need to take disability into consideration in cases of suspension and expulsion. However, despite this, a content analysis study of school anti-bullying policies across 93 Victorian schools found that definitions rarely included bullying on the grounds of disability, nor bullying between adults and students (Marsh, McGee, Hemphill, & Williams, 2011).

4.2.3 International exemplars

There are some notable policy documents from further afield. For instance, in the New Zealand guide for schools on bullying prevention and response (Bullying Prevention Advisory Group, 2014), there is a clear integration and consideration of students with disability throughout. In addition in the New Zealand-based 'Wellbeing @ School' website (New Zealand Council for Educational Research, n.d.), there is a significant section on inclusion at school, discussing inclusivity at all levels of the school. In addition, the UK has several key national documents specifically offering guidance in relation to bullying and students with disability, with titles such as, 'Bullying involving children with special educational needs and disabilities: Safe to Learn – Embedding anti-bullying work in schools' (Department for Children Schools and Families, 2008), the other, 'Cyberbullying and children and young people with SEN and disabilities: Guidance for teachers and professionals' (Anti-Bullying Alliance, n.d.). These documents explore the experiences of students with disability in relation to bullying, offer legal guidance, and recommend and discuss best practice strategies and responses. The first of these documents is particularly rich in the voices of students with disability, includes a array of case study examples and offers a wide range of creative strategies and responses.



5. Research approach and methods

5.1 Participatory research

A participatory research approach underpinned both the development and conduct of the project. Participatory research offers opportunities for those with close involvement in the issues to have productive and effective input into the development of the project processes and outputs, and also provides for greater access to the people who will participate in consultation processes. Used with people with disability, it can be particularly effective and useful where the aim of the project is to empower people through the process of constructing and using their own knowledge to increase the relevance of both project processes and outcomes. (Fisher & Robinson 2010; Walmsley & Johnson 2003). It is often used when project and research interests centre on making change, and on the processes of shifting culture and practice in the interests of socially and economically disadvantaged groups (Mertens 2005).

In this case, we were concerned that the legal and human rights of students with cognitive disability may be inadequately met around safety at school. Review of existing legal and policy frameworks, and the analysis of previous research identified some foundation to this concern. However, in order to shift culture and practice in the interests of students with cognitive disability, it was essential that we gained an understanding of the experiences of students and the perspectives of other key stakeholders about how we might together address any gaps between the existing structural responses and students' lived experience.

5.1.1 Ethics

Ethical approval for the research was obtained through Southern Cross University, and through the NSW Department of Education. Further ethical approval was obtained through ASPECT to promote the research to students with autism in their services in the region. In addition to compliance with ethics protocols, we took great care to ensure that we minimised the chances of causing distress to children and young people and their families in discussing such a sensitive topic. Most student and family participants spoke openly and frankly about their experiences, and having a focus on safety rather than abuse allowed them to talk about harm only to a degree they were comfortable with. One young person withdrew during the research (with our encouragement), but seemed to recover quickly, and on following up with their support person, did not have lasting feelings of distress or upset. Free counselling was available to participants, but not taken up by anyone. It should be noted, however, that a number of parents spoke on behalf of their children, as they felt participation would be upsetting for them.

All names used in this report are pseudonyms. In particularly sensitive examples, no names or ages of children are used for heightened confidentiality.

5.1.2 Project framework and methods

Key stakeholders representative of each of the major groups supported the project, contributing to the design and analysis of the research and providing oversight and guidance to the project through a steering committee, informal consultation and interviews.

A review of the current landscape was made to better inform the research with students and those who support them. A comprehensive map of current rights, legislative, statutory, policy and practice responses to children and young people with cognitive disability who experience abuse, neglect, and harm was developed, supported by a multi-national literature and policy review. A legal and policy analysis of the potential gaps and barriers was undertaken. Interviews were then conducted with five key stakeholders (including students) to develop a comprehensive understanding of the range of barriers experienced by students with cognitive disability. The results of these interviews were used to inform the structure of the research activities.

5.2 Research with students and those who support them

Qualitative research was conducted with students, families, educators, and practitioners and policy makers in the child protection and disability support arenas.

Interviews were carried out with each participant. These were guided conversations, designed to identify people's understanding and experiences of safety and harm; the actions taken to respond to that harm; barriers at individual, systemic and structural levels; and ideas for overcoming barriers. A range of strategies were used to make interviews more accessible to children and young people, including adapted plain language and pictorial information and consent materials, pictorial concept mapping, and use of games and toys.

5.2.1 Recruitment

Children and young people and their families were recruited to the research through services they use and avenues they and their families use for support in making decisions and seeking information. This included community participation programs, respite services, support groups, community advocacy organisations, and disability specific information services. The research was also promoted through disability support and advocacy organisations, community legal centres and family support organisations. Tailored information was provided to schools in the region, but with little success. Almost all children and families were recruited through disability support organisations.

Teachers, principals, learning support teachers and teacher aides were included in the research through invitation to interviews direct to schools and by following referrals by other sources. Government, Catholic and independent schools were approached, and participated in the research. However, recruitment of educators was very difficult, and we received few responses, several direct refusals, and a number of cancelled appointments for interviews.

Child protection workers, therapists and disability support practitioners were included in the research through direct approach to non-government organisations providing family support. They were engaged and interested in the research, and recruitment was straightforward. Policy makers were included in the research through direct approach to the relevant Departments.

5.2.2 Participants

Two groups of children and young people were recruited to the project:

- a. School-aged students and their families
- b. Young people with cognitive disability who had recently left school who were prepared to reflect on their experiences of school

Participation of the first group was prioritized, and when it proved difficult to recruit sufficient participants who were still at school, we sought information from the second group. This proved to be a useful strategy, and information from the older young people was invaluable in gaining an understanding of the barriers and facilitators in accessing human and legal rights in this context.

Narratives were developed around **twenty seven** different children and young people, aged between seven and twenty seven. This happened in a number of ways:

- Thirteen children and young people were directly involved in relating their own experiences in individual interviews.
- Seven young people over the age of eighteen talked retrospectively about their experiences of school.
- Seven children participated in interviews with the support of their parents.
- Thirteen family members (primarily parents) spoke on behalf of their children and grandchildren.

CHILDREN AND YOUNG PEOPLE PARTICIPATING

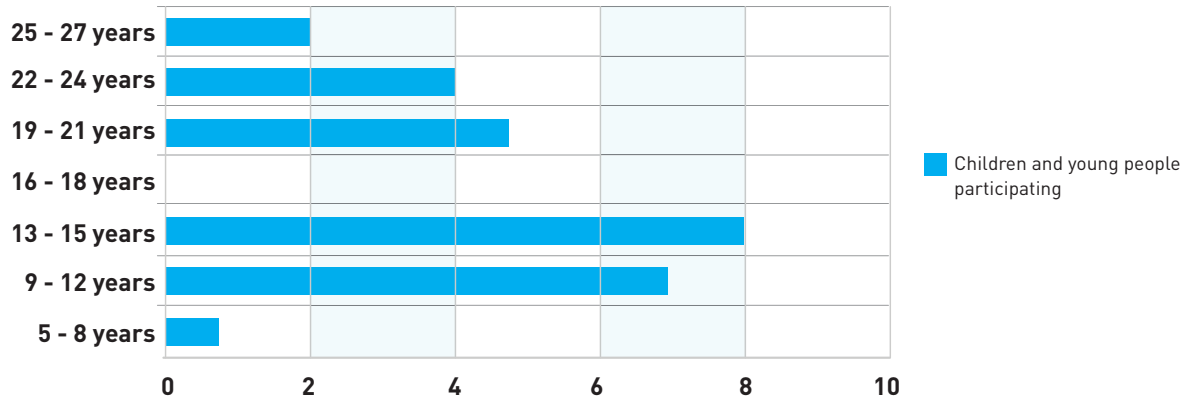


Figure 1: children and young people participating the research

Children in middle high school and late primary school were most strongly represented in the participant group. Young adults predominantly reflected on their experiences in high school, particularly middle high school. The absence of participants in the 16-18 age group is notable. The experiences of more boys (17) than girls (10) were captured by the project. A range of cognitive impairments were described by children and young people and their families. A significant proportion of participants (16) were on the autism spectrum.

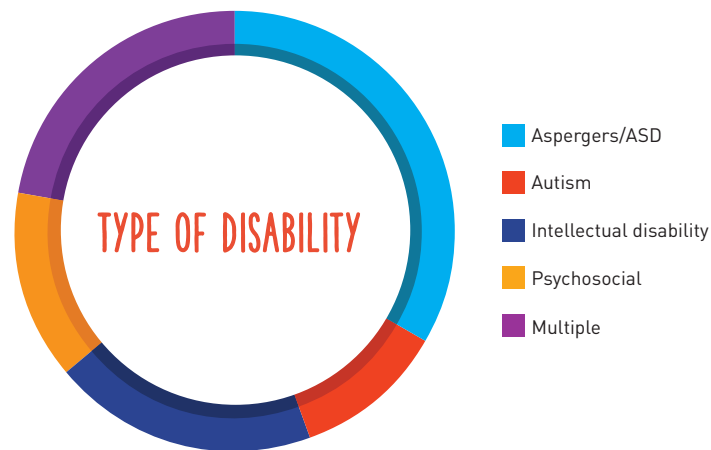


Figure 2: disability types of children and young people participating in the research

Where parents spoke about their children's experiences without them present, or without their direct contribution, this was due to a combination of factors. Primarily, the high support needs of many of these children prevented them telling their own story. Additionally, the level of distress their experiences still caused them meant that their parents were (justifiably) unwilling to allow their children to participate in interviews that may bring up feelings of upset or distress.

Fourteen key stakeholders participated in individual interviews. Nine were from the education sector (principals, deputy principals, learning support teachers, and teacher aides). They spanned the government, catholic and independent school sectors. Five came from the service and support sectors (family and child support, child protection, therapy, disability support).

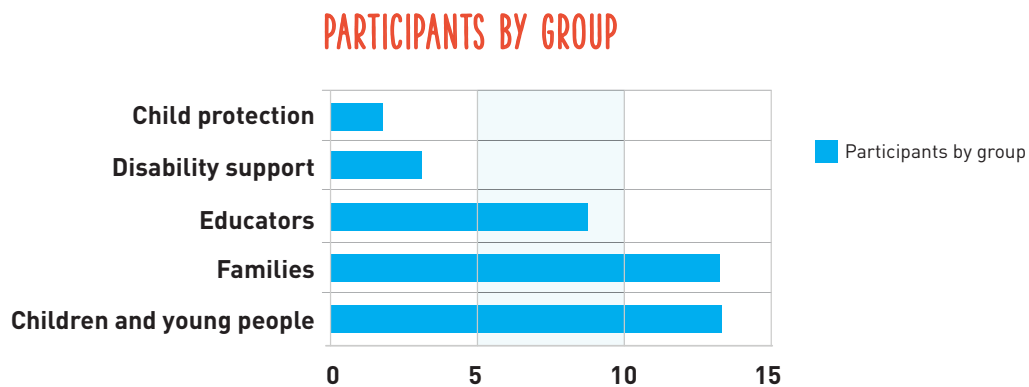


Figure 3: research participants by group

5.2.3 Data collection

Interviews with children and young people and their families were conducted over a period of eight months. Schedules for semi structured interviews were developed, and designed to identify people’s understanding and experiences of harm; the actions taken to respond to that harm; barriers at individual, systemic and structural levels; and ideas for overcoming barriers. All interviews were audio taped, where participants were agreeable, and later transcribed. Interviews were thematically analysed.

6. Results of the research

The contributions of participants were thematically analysed, and this material is presented in this section of the report organized by research question. The research questions which guided the project were:

1. What characterizes the experience of harm of children and young people with cognitive disability in and around school?
2. What are the barriers to keeping children safe?
3. What promotes personal safety for students and young people with cognitive disability?
4. How can their legal and human rights be upheld?

In order to prioritise the views and perspectives of students, in each section their contributions to the research are presented first, followed by the perspectives of their families. The systemic perspectives provided by key stakeholders follow the personal experiences of students and their families in each section.

The data which emerged from the project was highly consistent within the stakeholder groups, and to a degree, across the groups. Students' and families' contributions to the research formed cogent themes about the experience of harm, barriers, and things that helped in overcoming abuse and resistance to complaints. The perspectives of educators, child protection workers, therapists and disability support workers combined in concern at both personal and professional levels about the range and level of harms experienced, but an insufficient focus on prevention and early resolution of these.

6.1 What characterizes the experience of harm of children and young people with cognitive disability in and around school?

Children and young people and their families discussed a wide range of harms that they had personally experienced in and around school. The table below summarises and categorises these. While there is considerable cross-over between the groups, some distinct differences also emerged in the emphases of each group.

Students and ex-students talked predominantly about the ongoing (sometimes daily) interpersonal abuses they face or faced, and how these impacted on their confidence, happiness and wellbeing. Families raised more 'critical incident' types of injury and assault, and talked about distress and discord that these harms caused to both their children and the wider family, and about the difficulties they had in trying to resolve both the causes and the effects of the harm.

Key stakeholders – educators and administrators in schools, child protection workers, therapists and disability support workers – spoke more systemically about the impact of low expectations, discrimination and lack of access to needed support. Many of them saw the abuses experienced by students with cognitive disability arising in response to these core causative features.

HARMS DISCUSSED BY CHILDREN AND YOUNG PEOPLE	HARMS DISCUSSED BY FAMILIES	HARMS DISCUSSED BY EDUCATORS, CHILD PROTECTION & DISABILITY SUPPORT WORKERS
<ul style="list-style-type: none"> ▪ Verbal abuse ▪ Threats ▪ Cruel nicknames ▪ Kids were getting pushed around. ▪ Hit repeatedly by another student with disability ▪ Having a bone broken ▪ Being thrown into a wall ▪ Being punched, beaten up ▪ Hand stomped on ▪ Throw things at me at the bus stop ▪ Being tripped over, being pushed under the bus ▪ Verbal abuse on bus; being pushed and yelled at on bus ▪ Being picked on by teacher ▪ Homophobia, racial abuse ▪ Low level sexual abuse ▪ False imprisonment 	<ul style="list-style-type: none"> ▪ Verbal insults; degrading comments; mimicking ▪ Physical assault; 'a few bumps'; having chairs thrown at him; pinched (continually) ▪ Sexual assault ▪ Broken bone ▪ Hit by teacher ▪ Deliberate winding up ▪ Unnecessary restriction of movement ▪ Empty water over head in winter ▪ 4-5 boys 'rumbling' on 1 ▪ Threats on bus ▪ Unsupervised access to dangerous materials ▪ Threaten to call DOCS ▪ Leaving child sitting in faeces ▪ Teacher refusing to use child's communication system ▪ Removal of funding for use by other children ▪ Refusal of school to investigate complaints 	<ul style="list-style-type: none"> ▪ Targeting ▪ Labelling ▪ Bullying ▪ Bullying on school buses ▪ Reactive behaviour [to bullying, labelling] ▪ Hand slammed in locker ▪ Sexual assault by peers ▪ Child had chair thrown at them by teacher ▪ Bus driver screaming at child with disability ▪ Physical restraint ▪ Punitive removal of soothing objects ▪ Lack of support to complete curriculum -> act out due to frustration, boredom ▪ Falling in with the 'wrong' crowd/ getting involved with antisocial activities ▪ Lack of therapy services, public services – kids miss out on vital supports, communication ▪ Lack of access to specialist support in classrooms, or to the most suitable school – due to remoteness, lack of transport ▪ Distance kids need to travel to get to school ▪ Systemically lower expectations of participation, and what it might achieve. Not always consciously done. ▪ Social isolation ▪ Behaviours of concern/ challenging behaviour -> suspension, expulsion ▪ Resistance to enrolling children due to impairment/discrimination

Figure 4: Harms reported by children and young people, families and key stakeholders

6.2 What are the barriers to keeping students safe?

6.2.1 Perspectives of children and young people

When asked 'what makes it hard to stay safe?', children and young people talked about several key barriers to personal safety, particularly centred on how chronic harm was in their lives, feeling unheard and isolated, and feeling either that help was not provided when they asked, or unable to ask for help. Young adults in particular talked about the negative impact on their lives over time.

The chronic nature of harm

The most common and pervasive difficulty for them was the chronic nature of the harm they experienced, particularly verbal abuse and bullying. Several spoke about receiving negative comments from other students 'all the time', and made comments such as 'kids can be really mean'. This created a climate in which some young people felt unsafe, as the following comments illustrate:

I felt unsafe most of the time with some of the people there, they were always bullying you and trying to pick fights with you both in and out of school. Rosie, 20

Ineffective protection by teachers

Compounding this was a feeling that responses from teachers were not effective, and the verbal harassment or bullying did not stop. Students and ex-students felt that a number of teachers did not respond when they saw something happening, or responded inadequately, meaning that harassing students were not stopped. For example,

Teachers saw it happening and said 'oh well, she has to learn sometime. A few said 'oi, cut it out' to a kid, but that was about it'. India, 19

Others felt that teachers tried to manage the situation, but at certain times, like when the teacher walked out of the room – bullying and verbal abuse went on while they weren't there. Jane said 'Once the teacher steps out of the room, you're fair game'.

Not feeling heard

It was common that students and ex-students felt that the harms they had experienced were inadequately recognized by teachers, deputy principals and principals. Several young people related experiences of trying to speak to their schools about harms, some very significant, and feeling ignored and dismissed, or responses given by teachers such as 'just be nice to each other'. They talked about nothing changing as a result of their parents phoning or meeting with the schools, and a view that they felt some school staff had that this was a normal part of growing up – as one young person put it 'they're kids, that's what kids do'.

I was picked up and thrown into a brick wall by a year 12 kid, and I went and told the deputy but he didn't want to hear about it and told me to go back to class. James, 14

Feeling alone

Some students talked about drawing on the support of a small number of friends. When those friends were not at school, or worse, left the school, things were particularly tough for these young people, and they felt very isolated and found it harder to deal with negative social interactions and interpersonal harm.

Not feeling able to tell

Young people who had left school reflected very consistently about how hard it was to tell someone about abuse or harm they experienced, and remembered not feeling able to tell anyone at school. They talked about ignoring verbal abuse and harassment, but it becoming worse and worse over time. Speaking about ongoing bullying and physical abuse, Garth, 19, said:

I didn't tell my parents. I don't know why, didn't want trouble.

Younger children did not talk in this way, and those who participated in this project spoke about how they talked to parents and teachers about the abuse they experienced, but it wasn't easy to do. This is an important distinction, pointing to the need for proactive action to ensure personal safety for these older students.

Impact on own wellbeing and behaviour

Three young people talked about being 'pushed to the edge' by the continued interpersonal abuse from other students, and 'losing it myself'. One student said it 'Makes me angry. Other kids winding me up'. The intersection of interpersonal abuse and their own anger management issues resulted in suspension warnings and other discipline responses from their schools, and damage to the relationships between them and other students. One young person who had experienced extensive bullying described what it felt like for her:

I lash out at people sometimes...I keep anger inside of me. I said something to one of my friends and I just lost it, I called her a whale, I was a bully. I lost it and nearly punched the teacher. I got a suspension warning for it... I am not that type of person – I am sensitive as well. I get angry and sad at the same time. My friend was in tears when I said that to her but we made it up. Patsie, 19

A small number of young people also talked openly about depression and anxiety which they felt was caused by the way people were treating them. This led to missing a lot of school and significant distress for these young people and their families. Three had left school due to the severity of their anxiety about the severe abuse they experienced and were being home schooled.

Feeling left out of the solution

For several young people, having parents and school staff 'sort out' the problem was not a satisfactory solution if they were not involved. A significant number of young people also commented on their frustration in not knowing either the process or outcomes of meetings between the school and their family to resolve problems about abuse and interpersonal harm. They felt that they were 'being treated like a baby' by their family, and not included in the solution-making for a problem which they were living daily.

6.2.2 Perspectives of families

The interviews conducted with family members revealed complementary concerns to those of children and young people. Parents and grandparents were primarily struggling with communication, attitudes of school personnel, and a lack of adequate concern for the harm experienced by their child.

Lack of communication about harm

Many parents gave examples of situations where they discovered significant ongoing interpersonal harm occurring to their child, but had not been advised of this by school personnel. When they contacted the school, the most common response they described was that their concerns were downplayed and minimised, either by assuring the parent that the school were addressing the issue or that things were not as bad as they had been led to believe.

Several families described situations in which they struggled to get an adequate response from their child's school about incidents in which their child had suffered injury. One family spoke about their unsuccessful attempts to have a series of safety issues addressed, including having no safe outdoor area, unsupervised access to electrical conduit and pipes, and enforced mixing of children with diverse additional needs at recess and lunch resulting in distress and altercations. Repeated contact over a school term with both the head of the special unit and the school principal was met with the same response of 'we're onto it', but no change. The family moved their child to another school due the severity of the unaddressed safety risks.

Several families spoke about finding out about harm in and around school some time after it had occurred, and of a reluctance on the part of some schools to report problems or harm to them.

He was severely bullied. I was not told about the bullying. The school said 'we like to keep it in the school and not involve the parents'. I found out when my grandson said 'how will I kill myself?' Margie, grandma of Peter, 13

Using policy as a shield

Ongoing communication between home and school to support difficult situations in children's home life which affected their safety both at home and during school pick-ups was discussed by two parents. In situations of domestic violence and custody disputes, the reluctance of schools to become involved and to use policy as a rationale to avoid discussion with families about the safety and wellbeing of traumatised children was felt keenly by parents to be a breach of their responsibilities of care. Parents and carers also felt that school teachers and other personnel failed to adequately recognise their children and their emotional needs at school in these situations.

One weekend his father just didn't turn up to pick him up from school and they rang me and demanded I come and get him. I said I can't come because of court orders – if I come I am breaking court orders that he go to his father's. And they said 'if you don't come and get him, we are dropping him off at DOCS. You've got 5 minutes to come and get him'. I had to quickly ring my solicitor and 'what will happen if I get him?' My instincts were to just race up and get him. He was so anxious on Fridays not knowing what would happen. Mum of young boy

Families also talked about a number of schools responding to their expressions of concern by citing policy and legal responsibilities, rather than expressing shared concern for the welfare and wellbeing of the children.

My disappointment was the lack of support from the school. They talked legal jargon not personal stuff. You would go to the school about something and they said 'we have to get our legal team onto that', and fob it off.

Amanda, mum of Steven, 12

A number of families mentioned their discomfort at feeling like a 'troublemaker' or on 'opposing sides' for raising concerns about harm and abuse with school personnel, particularly if they had to speak up repeatedly. This affected their relationship with the school on more routine matters, and engagement on everyday issues on behalf of their child.

The teacher started coming to me and saying 'he's doing this, he's doing that, and it was over and over again... [We] ended up calling a meeting at school and saying 'look I want to see his PLP [personal learning plan], well there was no PLP.... So they wrote a couple of dot points on a piece of paper, it wasn't anything like a real PLP with outcomes or plans or anything. I do believe it was that particular teacher who wanted a run of the mill class and not to have to do anything out of the ordinary.... They weren't willing to take on any extra help – [ADHC psychologist] offered to support them but they didn't take her up on it. Not once did they take her up on any of her offers.

Maeve, mum of Hamish, 7

Negative attitudes towards students with disability

Families reported that the attitudes that school personnel held towards students with cognitive disability affected their willingness to prevent and address interpersonal harm, and also laid a foundation of valuing or devaluing of children with disability for other students to take as their guide.

My son had real bowel issues, and would poo in his pants. The teacher said he 'did it on purpose' and left him in poo all day. She saw his behaviour as malicious... I arranged signing classes for the school, and she attended those but then refused to use it. I found out what was happening when a little boy said to me 'are you Jasper's mum? You know they hit him at school.' When I complained, no-one believed this kid, and said he was a trouble-maker. My daughter's teacher finally saw something, and to this day I don't know what, and she finally reported it. A meeting was called with the principal and the teacher and I brought along an OT and my husband for support. The whole time the teacher sat with arms folded and would not talk about anything to do with her, only about Jasper's problems... We never saw her again after that meeting, she disappeared from the school.' Penny, mum of Jasper, 11

We tried to address some of that [teasing and bullying from peers] with the school, but their attitude to it was very much like 'well these kids have been here since kindergarten and they wouldn't do anything wrong, so it's your child who is the problem... in the end we went to the principal who was dismissive and rude so we decided that was it – we pulled him out and sent him to [another school]'. Amber, mum of Thomas, 14

Lack of understanding of what it means to have cognitive disability

Coupled with negative attitudes, families frequently reported that school personnel had a limited understanding of what living with cognitive impairment was like for their children. They saw the impacts of this lack of knowledge as a failure to meet the needs of the children. Numerous comments were made by school staff to families about the need for children with complex needs to 'toughen up' or adapt better to school life. One family talked about the redirection of funding intended for their child to a group of children within the school who had not received a diagnosis, as the school had made a decision that these children needed the support more.

Juliana was bullied by other kids on the bus and at the small local public school. They always responded the same way, they said that 'Juliana misunderstood, we'll talk to the kids'. I was at the school nearly every day finding out what was going on and always got that answer – Juliana misunderstood. But nothing changed... They didn't stop it – they said would look into it, that she misunderstood, to calm me down. Caitlin, mum of Juliana, 14

I honestly believe there needs to be a big overhaul on skill development for teachers. Years ago you didn't hear about things like foetal alcohol syndrome and now there are so many kids on the autism spectrum, teachers need skills in how to deal with all this if we want kids with disabilities to be safe at school. Maeve, mum of Hamish, 7

Dealing with abuse getting to and from school

Ongoing abuse on public transport, particularly school buses, was a concern to several families. This was difficult for them to resolve, as some bus companies took a 'hands off' approach to involvement in any problem between children. One excluded the perceived offender from travel on the bus for a period. Other bus drivers were more engaged and supportive of students, encouraging them to sit closer to the driver, but limited in how much protection they could offer from interpersonal harassment.

Thomas had kids bigger than him threatening to bash him up on the bus and then his eldest brother decided to encourage them to do so. We didn't find out until we were moving away from that area because he was afraid to say anything in case it got worse. Amber, mum of Thomas, 14

[Peter] had huge problems in the bus, teased by high school kids. They would say things like 'who thinks Pete's a douche bag?' and all the other kids would say 'yay!' Margie, grandma of Peter, 14

[The taxi] driver touched her hair and said how beautiful it was - my alarm bells went off. Claire is very pretty, and my worst nightmare happened. A taxi driver molested her - I know because I dressed her carefully, I wanted her to present well... I dressed her in the morning, did all the buttons up, when she came home her buttons were undone, ten minutes late, pulling her seat belt [like] she didn't want to go with him.

I rang DoCS at the time, rang the Kids Helpline where I was on hold for 20 minutes, rang the school. The taxi company rang me and said these are very big allegations. I went to the Department [of Community Services] and told him and he did [nothing] about it. He suggested I ring Kid's Helpline – a terrible response. We ended up driving Claire for the rest of the term.

An acting principal was there when [this] occurred. They responded by saying they had a complaint about me...I was an articulate person and did all I could. I talked to other parents and told them about the taxi driver molesting Claire - they did not take him off the school run which is all I wanted. The school didn't support us. I was disappointed on all levels.

No one was listening, no one was doing anything.

I didn't protect my child; you hand your child over and think they will protect them like you will.

Therese, mum of Claire, 27

Bullying at school has been extreme since February. Our son has had his life threatened, been pushed in front of a moving bus, had threats of having his head bashed in. It started slowly and escalated, till every day his life was being threatened and teachers had to walk him out of school grounds so they knew he was safe. His teacher spoke to me about it a few weeks ago. I wasn't aware till then because he keeps it in and doesn't like talking about it.

He had a problem at school so went to talk to a teacher about it and he told me all about these other things that were happening at school. So I arranged an appointment with the deputy principal and spoke to her over the phone about it, and she assured me that my son would be safe at school, that nothing would happen to him and that she would personally keep an eye on him.

The first day back after 3 days off school ... I got a call from my husband saying that our son was in the doctors with a broken wrist... I spoke to the principal about it and he ... said he was sitting on the railing swinging his legs and fell off, and I just looked at him and I just laughed and said you have no idea what is happening in this school. He read the incident report where the student who pushed him admitted he had done it and was told by students in another grade to push him. So the principal was just trying to cover it up, he didn't realise I knew that he had been pushed by this boy. He tried to blame my son. He admitted it.

They wouldn't do anything at the school until they had all the incident reports so we rang our local police department and got their input on it and they came and interviewed our son. They said they couldn't do anything about it if the school took action. Couldn't 'double dip'. But the school got in first and the student got a one day suspension. That was it... they said it would be a suspension warning but I said that is not good enough. I said what he has done is assault, it's a crime. They said no it's an accident, I said 'no you don't just go up and push someone off a railing accidentally!' It was out to cause harm. I said 'if you don't do anything I will get the police involved and will charge him with assault.' That's when he spoke to him and his family.

The police have warned him, and spoken to the other students and the parents about the bullying. The school principal and the deputy and school counsellor and the head teacher had one on one meetings with parents and teachers and talked them through if it happened again.

Nothing has been sorted, they haven't rung to see how my son is, they keep trying to brush it off saying they can put him in a little corner away from everyone else. To me that's not making him safe, it's just making him more vulnerable to the bullies who could corner him in there. I've asked them to let him come home for recess and lunch so he can be safe here at those times but they won't OK that as they said it's not fair to other students. I have asked them to let him come home early to avoid the bullies but they won't do that either, so they are not accommodating me or my son, only the bullies. Now my son is at the point where he won't return to school.

I would have like to have seen things done there and then not waited days to do anything about it. I would like the bullying to be dealt with straight away and not left. For the principal to actually be involved and say yes there is a problem in my school, not wipe it under the carpet and say there is no problem. I am still going ahead with the education department - they want to organise a meeting with all of us at the school about how I can make things safer for my son.

My kids are meant to be safe when they are at home and at school.

6.2.3 Perspectives of key stakeholders

Consistent themes emerged from interviews with key stakeholders about the increasing complexity of the environment in which they were working, and how few resources (financial, collegial and collaborative) they felt able to draw on to best support students with cognitive disability, particularly in mainstream schools. Most people interviewed spoke about the increasingly complexity of the support needs of students in mainstream schools (and the consequent struggle for many teachers to respond effectively); decreasing resources to support students with cognitive disability; difficulties in both accessing information and in sharing information with colleagues who may be unwilling to take up inclusive practice; and how difficult it can be to support individual children when systemic structures do not support the actions needed.

Increasing complexity in students

Teachers with lengthy experience discussed the increasing complexity in the students they supported at school, and the consequent changing nature of education and special education. They said many more students have joint diagnoses of autism, intellectual disability and mental health problems, particularly anxiety, a combination which is difficult for them to manage and which impacts on interactions with other students and teachers, expectations and behaviour.

I don't think a week would go by when you don't see kids that are acting out from some sort of sense of upset or anxiety over something that's happening. And it's not necessarily a bullying sort of issue. But it's just that social relationships for these kids are really difficult, particularly as they're going through puberty at the same time. Learning support head teacher

What we are getting a lot more of is kids who don't fit the mould. Primary principal

Child protection workers endorsed this pattern of increasing complexity, discussing the high numbers of students with cognitive disability they saw who were repeatedly suspended and at risk of permanent expulsion from school due to their behaviour.

[it is] difficult, complex, because they are usually in year 6 or high school, so an entrenched pattern of behaviour, and supported by the family, an entrenched family dynamic. Usually lots of additional needs in the family, compounding issues for the child, plus lack of knowledge and understanding by the teacher of the causes of the behaviour, such as disability and family issues. Child and family support worker

Responses to complexity were mixed. A therapist raised the issue of physical restraint of students with behaviour problems, who were 'put on the floor and 'held' there' in order to manage their safety and that of others, saying that in her experience there was 'a level of physicality that continues to occur within our modern school system'. While this is a difficult and multifaceted issue, she had worked in therapy with children who had been deeply traumatised by their experiences of restraint.

One teacher discussed a new separate playground area for students from the special unit, supervised by existing staff as part of whole playground duty but an area specifically for students with disability, to which they could invite friends. This strategy was implemented in response to teacher concerns arising from an inability to supervise kids with complex support needs in the wider playground who needed

a, a safe place to go and b, a bit of closer watching, because they are bullies themselves. Because they come from experiences of domestic violence, and all sorts of welfare issues, and that impacts on them, so that they don't interact very effectively with other kids very often. Learning support head teacher

Child protection and family support workers spoke about the value of well trained staff who know the students, their method of communication, and 'who they are as people' as ways to address rising complexity as well as good practice. They saw rapport building with families and kids as essential, and encouraged early use of specialist supports so that kids were better placed social, emotional and practically when they were older. A local child protection agency had run training around complex behaviours at the time of the research, and schools took it up with enthusiasm. Through this, a gap was evident in teachers' knowledge about more complex in-depth assessment and looking at the different risk factors for children:

I don't think [teachers] have the competencies or the training, and perhaps the time needed or the staffing, to look at it in that model, and yet what we're seeing is more and more complex children coming through schools with complex needs. There's a gap, and training to schools would help.

Child and family support worker

Decreasing resources

Changes to funding levels for students with disability were mentioned by all educators as impacting on safety, due to the reduction of individual support to students available over time.

Effectively supporting students requires collaboration, according to teachers, and this requires time. With small allocations of time for administration in addition to teaching responsibilities, teachers described collaboration with children, families and other teachers often happening informally and 'on the run', saying 'you can't be in meetings all your life'.

Both child protection workers and therapists described frequent conversations with teachers in which educators spoke about how difficult they frequently found it to work with maximum effectiveness when they had little training or professional development in working with students with cognitive disability, many competing demands, and when some were not strongly motivated.

Silos of knowledge

Special units in some schools were seen to be repositories of skilled knowledge and information about supporting students with cognitive disability in mainstream schools. This was important to deputy principals who viewed them as a resource of specialist expertise. A range of perspectives was evident in interviews with school personnel, and while some deputies were engaged and interested in supporting students with cognitive disability, others saw the responsibility for maintaining policy knowledge, current practice advances and support protocols within the school as resting in the special unit, rather than a broader responsibility of the deputy or principal.

I think the barriers are really around it being exhausting for teachers. The huge majority of teachers I meet are so well intentioned, really caring people and really do want the best for all students. And I think they often feel if they had more resources they could do more for the kids, and do it better. And a lack of professional development and support for the teachers can make it difficult for them... to feel supported to do things differently. Therapist

Learning support teachers were supportive and appreciative of their colleagues who took a positive approach to supporting students with cognitive disability in their mainstream classes. However, they consistently reported that the collaboration and preparation required by other teachers in order for learning support to be effective was not always willingly provided. Some teachers were unprepared to make the necessary adjustments or expected more teacher aide time for supporting students than was available with funding, and in some cases executive staff were not fully supportive of inclusive education policy. A teacher aide spoke enthusiastically about a new semi-regular aide meeting introduced to provide collegial support, responding to their identified lack of opportunity to discuss the social and emotional issues that arose in their support work.

In some instances, this specialist knowledge was viewed as critical for driving change. Both educators and other professionals in the child protection and disability support fields identified change agents as important in driving a school culture which adopted new initiatives, took an active approach to inclusion, and was proactive in addressing safety issues for students with cognitive disability.

I think the thing that works most successfully is if you put one or two key people in a school that do have that professional knowledge, that do have that commitment, do have that drive to be able to make change within the school, and that seems to be the overarching – yep, let's get some different types of programs happening in schools. Change agents. Child and family support worker

Difficulty getting to the root of problems

Some teachers talked about casual staff and other teaching staff being reluctant to probe for the causes of student's distress, and the continual changing between classes in high school which can mask ongoing interpersonal harm from teachers' views if students do not raise it.

I think it's very easy for kid's concerns to be swept under the carpet, to be forgotten. It's not necessarily that teachers don't care, it's just that it could be very much a matter of out of sight, out of mind. Learning support head teacher

Some students come from very complex family environments, and have such experience with abusive home life that one teacher talked about the creation of a safe space at school as a 'counter-cultural environment'. Educators gave examples of students' family lives which were abusive and neglectful, and talked about how this affected their ability to trust other people, their confidence and ability to learn, and the negative impact on their interpersonal relationships with other students (through their learned aggression or other student's reactions to their smell in cases of neglect). Child protection workers spoke about students with cognitive disability who were repeatedly suspended from school, but being sent home to situations of domestic violence. Many key stakeholders discussed the need to understand the context of student's home life in order to effectively support them to manage their own behaviour and safety.

The use of suspension and expulsion to deal with interpersonal assault and abuse also brought only temporary respite to some students.

Young people have told me that there might be somebody behaving really badly and they get suspended, but they might be suspended for a few days and then it is just the same when they get back to school – nothing changes. Disability support worker

The structure of the school counsellor role in many schools was identified as problematic by child protection workers. They were of the view that this role would be more effective if it could be more normalised – currently, a student needs to be identified as 'needy' to get support, whereas an approach in which life is difficult and we all need supports may open the doors for more students to access support. An example of a school counsellor role jointly structured as a careers advisor and school counsellor was provided as an example of this – students could go into this office for either purpose, with no-one else knowing why they were there.

Getting collaborative support

A number of stakeholders described situations where either several different personnel needed to work together, or a number of different systems needed to dovetail in order that students receive effective support to be safe at school. This proved difficult to manage on administrative and bureaucratic levels, and the cost to children and young people was high.

I have worked with some children who have been sexually abused by other students, outside of school... Most go to JIRT [Police Juvenile Investigation Response Team] but typically the perpetrator isn't charged because they are either a) not of age or b) the victim is not considered a reliable witness. Typically the abuse goes unaddressed. It spills over into school because the child who has been abused has to still go to school with the perpetrator. I had a massive problem with this when a girl had to go back to school and I asked for her to be able to change schools and the system wouldn't allow it. They were both in the same [support] unit and they said 'it's no problem his class is over here and her class is over there'. I said 'they are still going to see each other all the time'. She started wagging school, of course she doesn't want to be there, and she doesn't feel safe. They just say 'its ok we'll just manage that with supervision and having them in different classes'. They just don't get the emotional impact. Child protection worker

We seem to be better able to advocate in primary schools, but there seems to be a vacuum in high schools. Not all, but those big state high schools, it's really difficult to get someone's attention, or to be able to implement strategies that you're sure are going to be successful in making a difference to the child. Child and family support worker

Having to buck the system to support children

An experienced practitioner reflected on her early experiences as a teacher's aide, including the conflict she felt in making a complaint about the abusive behaviour of a school principal who shouted at, intimidated and threatened students (later substantiated).

I was quite intimidated by someone a lot higher up, much older and with many more years of experience... I watched [one boy] become very distressed and exhibit behaviours – he was beside himself. I really noticed this profound impact and asked another staff member what happened, and they said the principal had taken this young man's hanky away – he self stimulated [stimulated] with the hanky a lot, and it really calmed him down. It was very punitive and really negative and cruel and unhelpful, and didn't follow any of the support guidelines, and this wasn't a child who behaved badly. I felt very torn – the principal said 'don't you get that out of the bin for him!', and here I was, a young new recruit.

Responsibility does not end at the school gate

Most educators saw their responsibility for promoting and addressing the safety of students with cognitive disability to extend beyond the school gate. All interviewed expressed the view that schools played an important role in resolving conflicts and problems which occurred on the way to and from school, including on buses, when students were walking, and in taxis (although insurance of taxi companies covers driver actions).

Whenever they are in school uniform it's our responsibility, it comes down to what the expectations are of kids while in uniform. Primary deputy principal

Facebook's a huge problem for us. I just curse the day our kids used Facebook...You'll get some students that get a lot of enjoyment out of having a conflict situation, and will beat up some kind of drama over Facebook... And those sorts of issues are really, really hard, almost impossible, for us to get on top of. Because they're so fluid and they're happening almost out of our hands. It's all happening outside of school, but some kids can be made quite miserable about it, because they don't understand. The police have been very helpful... talking to kids – that's happened quite a bit, students have been cautioned. We always take it very seriously. If you can work out what's happening, if you can get the facts of the situation, you can do something about it. But it's very difficult and hugely time consuming.

Learning support head teacher.

One school principal said she had been advised by the Department of Education and Training Director of Legal Services that 'once they leave the school and are on the bus it is the bus company's responsibility and then by default the parents. We will do what we can but in a court of law it is not our responsibility what happens on the bus.' Another senior educator with extensive experience as a principal and policy maker held an alternative view, citing a departmental directive that the role of teachers and principals extends from home to school and back again.

Transport problems

Interpersonal harm on transport to and from school was raised as a problematic issue by several key stakeholders. Bus drivers in this regional area may be the only adult accompanying up to 45 children for over 90 minutes, while driving a bus and navigating country roads. It was commonly considered by interviewees that the expectations of bus drivers were very high, and that training and support was needed to assist them. Quality of drivers was thought to vary widely, as was the preparedness of drivers and the companies employing them to intervene in situations where students were experiencing abuse from peers. A therapist reported that students were restrained on bus trips by tying them in their wheelchairs, with the rationale of physical safety, but inadequate consideration of duty of care and children's rights. The impact of harassment and physical abuse on buses was thought to have lasting impact on students with cognitive disability:

Lots of school leavers who come here refuse to take a bus full stop! Because bullying has happened on the bus, not for everybody, but for a lot of people. So, we have some who no way will they go on the bus, their anxiety levels go straight up... in our area here, public transport is so limited, some still have to catch the school bus to get around, so it may still be the same kids who used to bully them at school on these buses. It's a really difficult situation.

Disability support worker

Sometimes we have instances where kids have to change buses, so they're out at the bus interchange, and then they interact with kids from other schools. Our kids are sometimes a bit vulnerable in that situation, because other kids will take advantage of them. Sometimes it's been taking money off them, more often than not just making fun of them in ways that they don't quite appreciate... And it's the sort of thing that we don't have any control over. We don't have any of our teachers down there.

Learning support head teacher

6.3 What promotes personal safety for students?

6.3.1 Perspectives of students - What helps?

Students were very consistent in talking about the things that helped when they experienced harm. Having someone who knows and values you, being acknowledged, listened to, and having concerns taken seriously was of great significance to young people. When students experienced abuse, they said the most helpful thing was being believed and having action taken to resolve the situation. Having strategies to deal with abuse helped. Several young people were concerned about the root causes of interpersonal harm and violence, and felt that action was needed to get to the bottom of problems for both victims and instigators of bullying and assault.

Being known and valued

Feeling connected to at least one or two key people in the school, and feeling that some adults and students in the school knew them and cared about them was very important to most students, and they described this as protective. These connections gave them somewhere to turn if things were not going well, and increased the likelihood that they would be believed and that action would be taken. Unfortunately, a considerable number of children and young people in this study did not feel that they had someone in their school who filled this role. For those who did, key people in the school took the roles of ally, advocate and supporter at various times for young people, and provided them with a range of different kinds of support. For example, a number of young people talked about crisis points when someone else had stood up for them – their brothers; other students; a support teacher; their parents. Support teachers were important to a number of students as people who knew them well, and provided ‘space to get away from the abuse and play music and relax’.

There was a support teacher who was really good. We could go to her room and play music when we were upset and then there was another support lady who helped too and the deputy principal was really good all the time. Rosie, 20

Friends were portrayed by several as important not only as positive social and emotional relationships, but also in protecting against interpersonal harm – both safeguarding against it happening in the first place, and minimizing the emotional damage when it did happen. One young person talked about ‘hanging with the older kids’ as a protection against harm in the playground.

I was best friends with some of the guys who were big and muscly and tall guys, they looked like bullies, but they weren’t bullying people. I felt protected because I had my mates around me. Harry, 19

Having action taken

When students experienced abuse, they said the most helpful thing was being believed and having action taken to resolve the situation. They very much wanted to see people being held to account for their actions, and took a positive view of the efforts of teachers, school administrators and families to do so.

Teachers who dealt with the problem were viewed very positively by students and ex-students. These teachers were seen to be both pro-active and re-active. They were able to assess what was going on and get in quickly to sort things out, before students had to complain. Once harm occurred, they could see the student’s side of the issue, and vitally, they took action to resolve the problem.

One guy actually physically stomped on my hand and I kicked him in the leg and the teacher took my side and that was a good day, that was a victory. That boy never bothered me again. India, 19

Deputy Principals who appropriately disciplined students who instigated serious abuse were recognized and appreciated by students for their support and assistance. One young woman had experienced serious and continuing verbal and physical abuse at the hands of a number of fellow students both in school and on the way to and from school:

He dealt with it properly, one got expelled and he always used to give you days off to get your head around everything, it helped a lot. Willow, 22

When parents took action, talking to the principal about bullying and physical abuse, talking to other kids' parents when their child had been bullied, or tackling the school about systematic abuse, young people were appreciative. They felt that outcomes were mixed – sometimes things changed for the better, and having parents go up to the school made a real difference. Sometimes, however, they felt that the school didn't really listen to their family and not much changed.

My dad came to the school and talked to the principal about some bullying and told the principal to stop it. A few people were bullying me. Then the kids got into trouble and sent from school and stopped doing it. Teasing me and pushing me around. It was good when dad went up. Garth, 19

Having strategies

Children and young people said that having strategies to deal with abuse helped them. Some of their strategies were effective in preventing abuse from occurring, while others were coping strategies for getting through a situation that they felt unable to significantly change.

Preventative strategies that children and young people found effective centred around promoting their capabilities and feeling able to stand up for themselves. Young people who were good at music, sport and being friends talked about how this had helped them to get along in the school community and avoid interpersonal harm. One young person talked about going to a self-defense and personal development group, and how helpful he found this in building his confidence and capacity to advocate on his own behalf. Others talked about how they felt able to say 'stop it' when hit or verbally abused – either directly or to someone in authority - and how in some cases this stopped the behaviour of other students. One young man who had just finished high school said

if they touch me, I see somebody, tell somebody. Josh, 19

Many of the strategies young people discussed were avoidance or coping strategies. A number of these involved children and young people doing what they could to manage in difficult circumstances, with few resources, and at times they made significant sacrifices to try to go 'under the radar'. They included getting out of the classroom and sitting outside for a while, putting music on through headphones so that nasty comments could not be heard, and one young person having surgery to minimize her impairment in the hopes that it would stop bullying and interpersonal abuse.

I stopped getting bullying, only now and again I get looks. I still get those and sometimes I get people saying stuff about me that I really hate, like 'you're a retard', people I know and people I don't know too. That's why I had the surgery so it would stop and I wouldn't look so different. Patsie, 19

Just one person gives me a hard time. Get him out of the way taking his hand and move him away from me [when he hits me]. He is in my class... Have to be kind, be respectful and calm. Kylie, 14

Staying/going from the school

Young people had mixed views about whether it was better to 'stick it out' at the same school, or to be able to move schools if ill-treatment became too difficult to withstand. Stability was very important to some, particularly those who found change difficult, and for these young people it was important not to be moving schools all the time. For others, being able to leave if it gets too bad was very important. A small number of children had left the education system altogether, and were being home schooled. The policy of having to attend your local school affected some students, who had to continue to attend a school in which they were experiencing significant difficulties:

I wanted to go to [alternative school] where my friends were but that was out of area... We tried to go to [this school] but it didn't work, I never got to go there.

Josh, 19

Looking to the causes

Several young people were concerned about the root causes of interpersonal harm and violence. Their personal experience of emotional and physical harm caused by students, teachers and systems in some cases also gave rise to a desire for better responses for all students with disability:

I would have liked to see the school and the teachers make a lot more effort, not just for me, but there's like hundreds of kids at that school being bullied on a daily basis. And I'd like to see all schools have tougher rules on bullying.

India, 19

While they primarily wanted abuse against them to stop, they also wanted to see evidence that schools were supporting bullies as well as victims, in order to stop the bullying behaviour, and saw a need to look at why students behaved in violent or unacceptable ways.

And they need to check out what is happening at home for the kids who are doing the bullying as well because something might be happening at home for the bullies. Rosie, 20

6.3.2 Perspectives of families

Families felt that proactive support which pre-empted unsafe situations was critical in preventing harm from occurring, and promoting a safe culture and environment for their child. The importance of teachers maintaining and expressing positive attitudes about their children was made clear in building their confidence, resilience and capacity to report negative experiences or harm, thus avoiding harassment growing into bigger problems. Responsiveness and openness when problems arose was highly valued by families in building their confidence in supporting their children in addressing concerns about safety.

A positive view of students with cognitive disability

Parents commented that the attitudes of teachers and support staff made an enormous difference to the school experience of their children, and by implication, to their safety at school.

around the time of the bullying one of the key people at the school got Thomas to come into her office and talked with him and supported him. I can't remember exactly what she said but she told him he was important and was a nice person and thanked him for coming and telling her what was happening. It was great for his self-esteem. Amber, mum of Thomas, 14

in primary school, her teacher in year 6 made bigger strides in that one year than in the whole of her schooling – she didn't stop Hannah being Hannah when it didn't matter. She knew which battles to pick and didn't pressure her to be something else. Beth, mum of Hannah, 14

Support which pre-empts unsafe situations

Having support which is responsive to student's needs and which pre-empts unsafe situations made a big difference to a number of families whose children had experienced abuse in previous schools.

I moved her to the local high school... it is heaps better. They understand if you have meltdowns and told me they could handle it when Juliana gets upset and they do. She is in a classroom of 8 kids and they teach life skills for every class. There is always someone walking with her between classrooms in the mainstream area... now, if something goes wrong, they let me know, if she gets upset they calm her down and tell me. Caitlin, mum of Juliana, 14

Claire felt safe at [primary school]. She had a wonderful teacher's aide – she needs one on one, had no road safety capacity, can't sit still for five minutes, and paces all the time. Because she had one on one they didn't have to cordon off the playground. Sixth graders mentored, so Claire had a mate who supported her in the playground. That was a really good system.

Therese, mum of Claire, 27

Some families talked about the protective qualities of friendship, particularly those whose children had moved from schools where they had experienced abuse to new schools where they were happier and had found friends and a more stable and safe environment. Having friends was seen by families as both important to their children's emotional and social wellbeing and also protective against interpersonal harassment and bullying.

Responsiveness when problems are raised

Feeling confident to raise concerns, and having reliance that these concerns would be taken seriously, addressed promptly and transparently was of great importance to family members.

Our son was coming home with bruises all over his face – we found out he was 'rumbling' they called it with these other boys, who decided they would see how many he could take on at once – 4 or 5 boys taking him on. We went to the school to talk about it and they were really good. They weren't aware of it but once we told them they brought Thomas in, talked with him, reassured him he was safe, and they talked to the boys who never did it again.

Amber, mum of Thomas, 14

We rely very much on the quality of our relationships. Working in partnership for Claire, that is what you need. You can have all the policies in the world... and it doesn't mean anything if you don't have the people.

Therese, mum of Claire, 27

Sometimes this responsiveness was tempered with the policy and bureaucratic overlays that parents talked about as barriers to them dealing confidently with schools.

I spoke with the regional director of education – she was very open so I tried to explain that my son was bruised and trying to run home to me, but the teachers wouldn't let him and didn't notify me. She said I needed to stop my conversation as they had to investigate. Then meetings were set up – things started happening, but not in any way that alleviated our stress.

Penny, mum of Jasper, 11

Advocacy

The involvement of an independent third person in meetings, developing plans and formulating strategies to resolve significant harms to students was found very helpful by the families who used both formal advocacy services and the more informal support of service providers and friends. Some families found that advocates were not always welcomed in schools, although this was not a majority view.

I feel [advocacy services] are underutilised and often used when things are at a 'crisis point' or on the way there. At times if a parent involves a third party it is seen as a pre-emptive strike, putting relationships with schools under pressure.... Whenever I brought in a third party it always put the school on the 'back foot' and was seen as a bit passive-aggressive. Penny, mum of Jasper, 11

6.3.3 Perspectives of key stakeholders

Similar to families, stakeholders working in or with schools viewed protection as connected to relationships, talking about the importance of building rapport, communication, and having trustworthy adults that children feel they can rely on. The creation of a safe school culture was viewed as critical by most key stakeholders interviewed. Where there is a lack of commitment to a child-centred approach, several stakeholders were of the view that students with cognitive disability felt the impact disproportionately. Meaningfully putting policy into practice, developing ways to promote the capability of students with cognitive disability, and working collaboratively with families were identified as key ways to promote students' safety.

Relationships and rapport

Most educators talked about the importance of relationships in both preventing abuse and creating a culture in which students felt able to report it.

Bullying can cause frustration for kids with cognitive disability, and is an unsafe emotional environment. It happens here, but we come down strongly on it, lots of rapport building with those kids so hopefully they are safer to report. We rely on other kids to report too. Learning support head teacher

The key is the relationship between the teacher and the kid. Understanding of the individual. The ability to communicate with a kid and build rapport is the key to keeping them safe. Primary deputy principal

Other stakeholders also viewed this as a great strength in schools when they observed it. Child protection workers viewed it as fundamental to thriving:

When children thrive – and this is in line with all children – if they have one or two key people in the school that they feel is a really safe, trustworthy, supportive person, they seem to do so much better... sometimes that's really lacking, and sometimes it's there in abundance... It's about connection, isn't it? Having connections with other human beings and feeling valued, I think. Child and family support worker

Creating safe cultures

The creation of a safe school culture was viewed as critical by most key stakeholders interviewed. Whole of school positive behaviour support, engagement from the principal through all levels of the school in inclusion building activities, and the promotion of a culture in which 'everyone is different and that's ok – we all need help with different things' were viewed by interviewees as core components of positive school cultures which were safety promoting. Where there is a lack of commitment to a child-centred approach, several stakeholders were of the view that students with cognitive disability felt the impact

disproportionately. Child protection workers spoke about the particular benefits to children with cognitive disability and the wider school community when an inclusive approach was taken, and the risks to children without due attention to relationships:

I've seen it work really successfully, where a school put a lot of emphasis on normalising the child, the child is part of our school, the whole value system, and particularly putting some thought and preparation into choosing the right buddy that has real empathetic personality, and that has worked really successfully. But other times, I've seen, where they haven't got the peer buddy system, where they've not made a conscious effort to integrate that child into the school, so then what I have seen, the harm to the child, is isolating and lots of labelling around that particular child in school. And then what tends to happens is the behaviours, and then the child tends to be labelled as a difficult child, and constant management of the behaviour. So, that can lead to things like getting into fights with other children, all those kinds of things can compound from that. And I think it can then lead to some emotional issues for that young child then as well, which can be really problematic.

Child and family support worker

The views expressed by educators were consistent with this, with most speaking about the need to create an environment in which all children feel secure, the importance of increasing the empathy of fellow students as a safety measure (so that they are more likely to report ill-treatment of another person), and the need for proactive action and early intervention in interpersonal conflict.

Our culture provides a lot of safety, having teachers who appreciate individual needs...if you aren't consistent in how you manage the kids and manage the school then that limits how safe kids feel. Heaps of consistency from teachers and the environment is tremendously important. Primary deputy principal.

Counselling is used frequently here, not just in a reactive way, but also if we find there is an issue for a kid with another kid we have mediation and social skills training provided by a counsellor to support the kids.

Primary deputy principal

Putting policy into practice

One principal showed a comprehensive knowledge of the suite of policies and legislation relevant to safety for students with cognitive disability. The incoming large scale policy changes to schools through 'every school, every student' [check title] and the wellbeing framework were mentioned by only two key stakeholders, in very generalist terms, as an approach which 'rather than having separate bits and pieces, will be unity of community, staff and students'.

The best knowledge is knowing where to look. You will never have all the policies and procedures you need to cover everything, they are in flux all the time. It's about knowing where to look. And to refer to them if something arises.

Primary deputy principal

Putting policy and procedures into practice was described as challenging by several stakeholders. It was addressed more tangentially than directly by most. Some educators described the collaboration between staff in developing plans to support students who were identified as at risk of harm. Others talked about the creation of positive cultures as important in preventing harm from occurring. Some practice responses in schools, such as setting up resource centres for staff about supporting students with disability, are practice examples of wider policy aims to build inclusive schools.

We do have our Wellbeing policy and within that is the anti-bullying policy, which applies to everyone... I had to pull [a] very nice group of girls in in the end and say 'Well, I am naming what you are doing and it is called bullying'. I said 'I am giving it a name and that's what it is'. You know you see things, but you have to have the proof. I could see the body language when [the girl being bullied] came near them, the boys were talking about ... germs, which is just cruel. After I named it one little girl came to see me with her parents who said they were here to support her and she said she had something to tell me. She said 'you know how you talked to us about bullying, it is still happening'. So I got each one in and I made them cry but they needed that and I said 'the next step is I get your parents in because I have given it a name now and that is what it is so if I see it again that will happen'... I have only done the naming once but I was very upset about it myself and that little girl who came to me was very brave to do that. She had tried all the things like 'don't be mean to her' and different things but she wasn't one of the powerbrokers. I would like to think we could do more work with the bystander. Primary principal

Students receive a lot of input about bullying, through curriculum, extra-curricular presentations by external bodies such as police liaison officers, and through schools' disciplinary structures if they are involved in bullying, when in some schools teachers described bullying agreements that students were required to sign. Teachers felt that the fluid nature of conflict between students was sometimes not well captured in school policy around bullying.

So, they are all very aware of bullying in general. They know all about it. It all gets a bit clouded because of a lot of – it's not very clear what is bullying and what is relation conflict. And the boundaries between the two are very grey at times... it's all very well having to sign an anti-bullying agreement, but unless you deal with what's going on...you've really got an uphill battle.

Learning support head teacher

Working in collaboration with families

Teachers and school leaders talked about working collaboratively with some families, but found it difficult to connect with the families of some children, particularly when there was abuse at home, or when parents had experienced a negative school life themselves. Some schools had active strategies to try to engage parents:

Twice a year we have a morning tea so parents can interact and discuss issues between themselves. Teachers set it up. Families' knowledge base is more than I ever know, because they are dealing with it. They know where to go, what funds to tap into, especially for kids on the spectrum. Primary deputy principal

Child protection and family support workers, whose role was to work with children and families, talked about the difficult tension they saw families face between the need to advocate for their child and not wanting to upset a delicate balance (particularly for children with challenging behaviour or complex support needs). One experienced worker said

I would say the majority of the families I work with aren't outraged about what is happening, maybe they are afraid of treading on toes. They all want their child to be supported as best as possible, so they say if you have a better way of doing something, please go ahead. And they'll talk about how their child has been talking about what has happened to them and be quite stuck in the trauma. Child protection worker

Promoting capability

Disability support workers talked about the impact on young adults of feeling incapable throughout their school life:

What we most often see is young people with a disability arrive with very low self-esteem and a great lack of confidence in their ability... That has been deeply ingrained and is a deep, deep scar. I think that is the most harm they suffer at school. I think it is very harmful to grow up with the knowledge that I can't do this, I am not like everyone else and no matter how hard I try I am still not getting there. Disability support worker

Modifications to the curriculum which met the needs of students with cognitive disability were viewed by educators and child protection therapists as essential to minimising psychological risk of harm.

If educational needs are not being met, then their emotional experience of that is that 'I am dumb, everyone else is working away on the sheet'. And often that is when a behaviour will happen and then would get reinforced by being in trouble for that behaviour. Child protection worker

Building the resilience of students with cognitive disability was viewed as important by several stakeholders, in addition to prevention and responding to concerns about harm.

There is a difference between someone being nasty to you once and incessantly eroding away your confidence and esteem. I think if you ask teachers that they would say 'oh kids come and whinge about everything'. So how do staff know when it's not just a little thing that is a pain in the arse or if it is a major ongoing issue? I think you have to be prepared to investigate... Sometimes people need to be able to say 'no I don't want to play with you right now'. You have to teach kids the real difference between being excluded by the group regularly than a once off of a child saying to you 'not now, I want to be by myself'. So we have to teach them about consent. We have to make sure to see both sides of the coin and to teach some resilience to kids.

When we went to the primary schools we talked to teachers and school networks like counsellors, and we asked them to identify kids who were most at risk of not succeeding in Year 7, because of behaviours or learning problems. Then we created a transition class. It had 10 kids in it but they were not all there at the same time. Mostly boys, we withdrew them for English, Maths and half of Science and put them into a more intensive learning situation, working on the same curriculum but distilling work down to short, sharp work grabs and equipped them to reengage in term 4 with their regular classes. It was intensive, supported work for 3 terms and this meant they had really good success, graphed and charted so they could see the change themselves.

They had specialist handpicked teachers strong in their capacity to handle behaviour and manage the class. We put a protocol in place that wasn't airy fairy. Kids got that it was a privilege to be in this class and that respect was expected. Teachers prepared all the work and rules collaboratively for that class. Kids were given a second chance, a third chance, then no chance. It was perfectly pitched for kids, and there were only 5 or 6 kids in the room at the same time. They could have one on one, we could push kids with independent learning, and then back in mainstream class they no longer looked like they couldn't manage. They were still in PE, tech and so on, so still building relationships with other kids.

We also built relationships with families, had lots of hospitality. We'd bring parents in - when they see kids creating stuff in class they are blown away, kids standing up and speaking about what they have done.

This program has been in place for last 4 years. We had to set it up to be staffed out of normal staffing entitlements. We started it because so many kids couldn't get into classrooms. We've seen big changes for kids, and they're ongoing. High school deputy principal

Another principal spoke about the safety promoting features of a positive peer group, saying that it can support the student with cognitive disability.

ADVICE TO OTHER KIDS - FROM KIDS

Young people also had advice for others who might be experiencing abuse in or around schools:

BE SAFE

- If you're not feeling safe, go somewhere safe

TELL SOMEONE

- Walk away and tell someone

GET SUPPORT

- Tell your brother or sister so they can say stop it
- Tell your family, so they can talk to the principal
- Find someone who knows what they are doing and ask them for help

USE THE SYSTEM

- Go to the principal and tell them they have to do something
- If they won't do something go to the board of education and also go to the police
- If it doesn't work, go higher up

ADVICE TO OTHERS - FROM PARENTS

- Pick your battles
- 1:1 support + student buddy = inclusion in primary
- Quality of teachers and other staff the critical ingredient
- Believe your children if they say something is wrong
- Never give up finding solutions for your children – keep on asking for answers until you are satisfied
- Having an advocate can help to support you – both in crisis situations and with regular meetings and planning
- Follow up – check what you're told to make sure it's being implemented

6.4 How can their legal and human rights be upheld?

6.4.1 Perspectives of students' - What would make it better?

When asked what would have made things better, students felt that responding more quickly and vigorously, working harder to address the causes of bullying and interpersonal harm, and trying new and different strategies would help. Young people had several ideas about how interpersonal harm could be prevented at school focused on education, increased monitoring and early intervention to prevent student to student harm.

Responding more quickly and vigorously

Children and young people were asked what would make (or have made) their situation better. They said consistently that addressing interpersonal harm from other students and teachers as soon as it happened would have made a difference.

In the beginning I ignored it then it got worse and worse. James, 14

Several students saw the need to increase the seriousness of the response to harassment and violence in and around school, particularly between students. Some students commented on their experience of physical violence, saying that they felt teenagers should be charged for violent assaults, regardless of whether they occurred inside school grounds. Several young people saw the need for clear rules which were explained to all students and which were consistently enforced. Most were not aware of any specific rules about bullying, violence or safety at school.

They needed to do a lot more punishment for the bullying. They need to enforce the rules and not say we are going to do it and then not do it. They don't follow through and then it gets too big. Rosie, 20

Changing the strategies of prevention and response

Young people had several ideas about how interpersonal harm could be prevented at school, including increasing education to all students about harassment, bullying and violence; putting people in separate classes to bullies; increasing the number of teachers on lunch duty in the playground; taking a firmer stand on unacceptable peer behaviour in classroom and excluding bullies; and making regular checks on the bullying situation in classrooms by having a second teacher or other person in the classroom to ensure no one is getting bullied.

Work to address the causes

In order to respond more effectively to harassment, violence or abuse, particularly when the severity of harm is increasing or when harm happens on more than one occasion, a number of young people felt that schools should look in more depth at the causes of harm and respond according to the problem at the source. Several students were concerned to ensure that schools built strong and effective communication with home for both instigators and victims of harassment and violence, especially when home was not a safe place due to domestic violence or other family dysfunction. When harm comes from teachers, young people wanted professional development and intervention to ensure that inappropriate treatment of students would be both recognised and acted on:

The teachers should learn to identify when they are bullying you. I had two teachers who were like that. Lots of people complained, but they're still working. India, 19

Some students recognised that dealing with interpersonal harm between students could be difficult and complex. They suggested that when teachers took time to get to know students better, they were able to more easily identify problems and deal with them before they became major issues.

[We] need teachers to take more time to get to know the kids and if they see something happening, even if it's after class, make the people doing the bullying and the person being bullied, and ask them why they are doing it.

Harry, 19

Some others were less optimistic about the prospects of making change through short term interventions:

I don't know – you can't will other people to behave decently. Putting two kids in a room with the school counsellor never helped me. Josh, 19

6.4.2 Perspectives of families

When asked what would help improve the current systems, families focused on increasing the level of priority given to responses by school personnel to reports of harm or complaints, attention to prevention, education, and advocacy.

Prioritising children's safety – restoring safety

Families consistently wanted to see stronger emphasis on both resolving situations of abuse and harm which had already been brought to the attention of schools, and to preventing this harm from happening in the first place. To families, this meant having better systems in place to respond openly and in a spirit of collaboration when students or their families reported harm; working together to resolve problems; and identifying strategies to prevent its recurrence. Several families wanted more clarity about what they could expect from schools in situations where children had reported harm, and most were unsure of the school's policies around abuse, harm and critical incidents.

I had some lovely teachers and lots of support from a teacher but she was tied as to what she could do.... She would say 'I'd love to report all this stuff [severe parental abuse]', but when she talked to the school about it, they said 'no, we're not getting involved, it's a court thing'. Mum of young boy

Prioritising children's safety – preventing harm

As well as improving responses to harm already experienced, almost every family wanted to see increased attention to prevention of abuse. This included work directly with the children, and also the creation of cultures in which interpersonal harm between children, or from adults to children, was not tolerated, to address the fact that some students were unwilling or unable to report maltreatment.

Bullying is addressed in an ad hoc way, but I don't think it is dealt with. Face to face, kids are too scared to say anything about what is happening to them or to other kids. Margie, grandma of Peter, Annie and Jess

Families had a number of ideas about how prevention of harm and promoting personal safety might be supported. These included increasing the number of teachers in the playground, or even a parent roster to ensure children with significant disability were not unsupported; implementing mentoring programs; and education for all students (see also below).

The playground is a big scary place for children, especially kids with cognitive disabilities and just 'go out and play' doesn't cut it for me. A lot of these kids don't know how to just go out and play- play what? ASD people are literal thinkers, and this is too generalised for them. They are left wandering a big playground alone and isolated... I think all the older kids should be taught to help the infants children so that the all the kids in the playground look out for them.

Lizzie, mum of Ethan, 12

Education for all students

Some families talked about responses from their children's schools which they felt were less than optimum, and how they would have liked to have seen a greater emphasis on educating all students, to break down the stigma of difference they felt existed between their children and the wider school community. This was particularly the case for children who attended special units in mainstream high schools.

I was not happy with their response when I told them about [other students calling my daughter] 'sped'. They gave me the impression that because they didn't hear it, it couldn't be happening. I would have liked more action, less denial, more accepting and a response like 'if this is happening let's educate the mainstream kids'. I wasn't going to have these kids calling her a sped when they don't even know her. Beth, mum of Hannah, 14

Advocacy

Several families talked about the need for wider availability of advocates – independent third parties who could support students and families both in times of crisis, when they have experienced abuse or other harms, and in more routine planning and engagement with schools.

I find I am ill-equipped to deal with schools because I can only come from the place of a mum, I can't come as a professional person, my vested interest is as a mum and I have my emotions involved so I end up looking like this blubbing mother where a professional person would go 'hang on a minute'. So having an advocate can help to support you. Rachel, mum of James, 14

6.4.3 Perspectives of key stakeholders

While stakeholders had awareness of policies, a number identified a gap in bringing policies together into a coherent whole. They saw a need for more support and guidance for teachers in mainstream classrooms to increase their capacity to support a diverse student group. They also saw a need for more support and guidance for students with cognitive disability in the playground to build social skills through play, and for all students to develop the empathy and community focus of the wider school community, and enforce the school's expectations about the parameters of behaviour in and around the school with all students. Access to therapeutic support for students who had experienced harm was raised as important, particularly those recovering from complex trauma. Support and training for bus drivers and bus companies was seen as needed to provide skills to bus drivers in supporting students with additional needs, and encouragement for bus companies to enforce codes of conduct.

Bringing policies together into a coherent whole

A number of educators and child protection workers identified a gap in 'tying policies together' and developing a systematic approach to supporting children with cognitive disability to be safe in their school lives.

How do teachers translate policies and procedures into their daily interactions with the kids? Teachers want really practical advice and they crave that.

Child protection worker

Further, they were concerned that there was inadequate monitoring of how well policy frameworks for complaints management, abuse prevention and whole-school approaches to safety were being implemented in schools.

Making sure they are being implemented and being considered when looking at issues. I think policing the implementation of the policies and how they are being used is a big gap. Primary deputy principal

Support for teachers in working with diversity in the classroom

All stakeholders spoke about the difficulties they faced in working with the increasing complexity of students in schools and classrooms. While some were welcoming and supportive of this diversity, others were overwhelmed and frustrated. A considerable proportion of stakeholders identified a need for more support for teachers who are struggling to manage the diversity of needs of students in their classrooms.

there is a big space there for all teachers to be skilled up around educating a child with a disability because it's not just mainstream and support units any more, there's a lot more movement, which is what the whole inclusion push was all about. But now teachers are saying 'I have 8 children with a diagnosis in my class of 25 and I am not special ed trained'. So I think it needs to be skilling up teachers across the board and I think teachers would really appreciate those opportunities. Child protection worker

Rather than itinerant support teachers who come in and assess the needs of the kids and leave instruction for the classroom teacher on what to do, two practitioners advocated deeper engagement through mentoring and observing good practice, arguing that this could build in additional opportunities for modelling the use of teaching strategies, incorporating practice useful to the whole class, and positive behaviour support tools.

One of the things we have been doing for the past year... is to put a specialised person into day care centres and the staff are watching how that person interacts with a person with a disability and models for them how to do it. The feedback has been phenomenal, imagine if we did that in schools! We show them it is not going to increase their work load and the end result is that teachers would feel more competent in their teaching and therefore they disseminate that through their kids. Disability family support worker

Openness to incorporating some of the visual and sensory support strategies useful for students with cognitive disability into teaching practice was seen by several interviewees to have benefits for all students and for teachers as well. For example, primary students all get up and do a marching song after maths. This simple strategy provides a mental break and sensory input – this helps all children, but really helps children with cognitive disability.

Support and guidance for students in the playground

Teaching support staff with long experience in supporting students with disability commented on the difficulties they noticed for many students with the rise of electronic toys in the playground, particularly with regard to children being isolated if they did not own electronic equipment or have the skills to use it; the lack of physical play to release pent up energy; and lost opportunities for group based games. Having engaged interaction and guided support from teachers or other adults during break times to use sporting equipment, have collaborative outdoor activities (such as building a cubby) and learn the social rules involved in playing or interacting positively together were all nominated by educators as strategies for developing skills in cooperation as well as positive play.

Disability support workers also commented on the value that young people with cognitive disability placed on mutual interest groups. For those who struggle with social interaction, the pressure to develop and maintain friendships can be stressful, and interest groups were seen to provide them with a focus for them to connect and share common interests, and build confidence and social connection through this engagement.

Child protection workers also discussed the need for explicit work to develop the empathy and community focus of the wider school community, and for expectations to be made explicit with all students about the parameters of behaviour in and around the school.

A lot of the time kids are expected to implicitly pick things up, and we forget that they need explicit teaching.

Students with unrecognised additional needs

There are particular difficulties for students with support needs due to cognitive disability, but who are either undiagnosed or who do not want to be identified as having additional learning needs. These students are often in receipt of little additional support, but may be at higher risk of harm. Educators spoke about the difficulties these children face in interpersonal interactions with peers, and in increased behaviour problems due to frustration and negative interactions over poor academic progress. Child protection workers reported that they frequently work with these children, who end up absconding from school, being suspended and expelled. Once they are out of the school system, their access into other programs such as Transition to Work (offered through NSW Ageing, Disability and Home Care) becomes harder.

Access to therapeutic support for students experiencing harm

Therapists and child protection workers commented on the lack of access to therapy which addresses the causes and impacts of abuse in student's lives, and advocated for increased access to therapeutic support for students who had experienced harm, particularly those who had suffered complex trauma.

Children with disability are denied the opportunity to access therapeutic responses. I fight for this but I am not supported. Mostly it's just assessment and recommendation. It's unfair to deny children the opportunity to therapeutically express what has happened to them. What we offer and don't offer gives a message. Therapist

Ensuring students have a safe and trusted person at school

A number of strategies were suggested by interviewees which centred on developing positive rapport and relationships between students and their peers; between students and support staff; between students and teachers; and between students and school leaders. These shared a focus on the development of mutual respect and valuing; making opportunities available for students to communicate positive and routine news as well as problems; and building the school community so that students held valued roles. Strategies included student mentoring and support programs, including relationships in personal learning planning, involving the students from special units more closely in the daily routines of the wider school, and reframing head of house roles.

I think [heads of houses] should be resourced to act as quasi-school counsellors. And some of them are, others not so much. Again, it's that normalised approach, that we're going to have challenges in life and who's the safe, trusted person that we can turn to?' Child and family support worker

Support and training for bus drivers

The level and severity of harms related by stakeholders on public transport led many to reflect on the need for support and training for bus drivers, including skill competencies which include children with additional needs. In addition to upskilling drivers, some interviewees saw a need for bus companies to take a stronger approach to interpersonal harm between students and prevent bullying and harassing students from travelling on the buses for a period of time, in accordance with their codes of conduct.

	KIDS	FAMILIES	STAKEHOLDERS
BARRIERS	<ul style="list-style-type: none"> · The chronic nature of harm · Ineffective protection by teachers · Not feeling heard · Feeling alone · Not feeling able to tell · Impact on own wellbeing and behaviour · Feeling left out of the solution 	<ul style="list-style-type: none"> · Lack of communication about harm · Using policy as a shield · Negative attitudes towards students with disability · Lack of understanding of what it means to have cognitive disability · Dealing with abuse getting to and from school 	<ul style="list-style-type: none"> · Increasing complexity in students · Decreasing resources · Silos of knowledge · Difficulty getting to the root of problems · Getting collaborative support · Having to buck the system to support children · Responsibility does not end at the school gate · Transport problems
WHAT PROMOTES SAFETY	<ul style="list-style-type: none"> · Being known and valued · Having action taken · Having strategies · Staying/going from the school · Looking to the causes 	<ul style="list-style-type: none"> · A positive view of students with cognitive disability · Support which pre-empts unsafe situations · Responsiveness when problems are raised · Advocacy 	<ul style="list-style-type: none"> · Relationships and rapport · Creating safe cultures · Putting policy into practice · Working in collaboration with families · Promoting capability
WHAT WOULD MAKE IT BETTER	<ul style="list-style-type: none"> · Responding more quickly and vigorously · Changing the strategies of prevention and response · Work to address the causes 	<ul style="list-style-type: none"> · Prioritising children's safety – restoring safety · Prioritising children's safety – preventing harm · Education for all students · Advocacy 	<ul style="list-style-type: none"> · Bringing policies into a coherent whole · Support for teachers in working with diversity in the classroom · Support and guidance for students in the playground · Students with unrecognised additional needs · Access to therapeutic support for students experiencing harm · Ensuring students have a safe and trusted person at school · Support and training for bus drivers

Figure 5: summary of participants' perspectives

7. Implications and recommendations for law and policy

The initial aims of the project were to improve the access of students with cognitive disability to protection in the event of maltreatment, and to strengthen the implementation of their legal and human rights in school settings. To do this, we identified the range of protections currently available at law to these young people, and conducted research to identify areas where they are not receiving due access to justice. Considering this combined material, what are the opportunities for improving law, policy and practice?

When analyzing the lived experience of the twenty seven young people and their families who contributed to this research, a discord emerges between their experiences of harm, the responses provided by education providers, and the systemic structures they found available to support resolution of their abuse. It is clear in this research that the rights of students with cognitive disability to be safe at school were in many cases not upheld, or not upheld without vigorous advocacy.

This section of the report concentrates on areas emerging from the research where change is needed to promote the rights and safety of students with cognitive disability, focusing on four key themes. These are:

[Better understanding of harm](#)

[Addressing the barriers to keeping students safe](#)

[Promoting personal safety for students with cognitive disability](#)

[Upholding the legal and human rights of students with cognitive disability](#)

7.1 Better understanding of harm

Multiple perspectives of the experience of harm and abuse emerged in this study. There are significant gaps between the experiences of participants and current legal and policy frameworks. The views of students and families about the level and intensity of harm, the degree of concern shown by schools, and the success of strategies offered in response to complaints about abuse were, as expected, less positive than the views of key stakeholders about how well they were doing in supporting students to prevent and resolve situations of harm. None of the groups were aware to a significant degree of the legal and policy preventions and remedies available.

Distinction between bullying and child abuse

Harm in schools does not appear to be considered as child abuse in the same ways that it may be in other contexts, and in both our study and other research was more likely to be referred to as bullying or interpersonal conflict. Bullying is defined as 'repeated verbal, physical, social or psychological behaviour that is harmful and involves the misuse of power by an individual or group towards one or more persons' (Safe Schools Hub, 2014). Some of the harms in this research described as bullying can also be described as assault, grievous bodily harm, intimidation, stalking, negligence and discrimination. Some can be described as child abuse, 'any non-accidental behaviour by parents, caregivers, other adults or older adolescents that is outside the norms of conduct and entails a substantial risk of causing physical or emotional harm to a child or young person. Such behaviours may be intentional or unintentional and can include acts of omission (i.e. neglect) or commission (i.e. abuse).' (Price-Robertson and Bromfield, 2009, cited on Safe Schools Hub, 2014).

For future action:

Clearer distinction in education policy between bullying and abuse, and for harms against students with cognitive disability which are crimes to be acknowledged as such.

Inclusion of material in anti-bullying programs that addresses stigma and bullying related to the experience of disability, the impact of bullying and strategies to promote peer inclusion and peer and adult connections at school for students with disability.

Research which measures the experience and prevalence of abuse of children with disability in schools, building from the research done already with other groups of children on covert bullying prevalence (Cross et al., 2009), but including other forms of violence (Caldas & Betsy, 2014) and understanding violence beyond the school gate (DeLara, 2008).

There is a need for better and clearer data on the nature, experience, scale and severity of harm experienced by students with cognitive disability across schools in all NSW jurisdictions.

Acknowledging increased risk of harm

There is little reflection in policy material of the well-established evidence that children and young people with disability are at significantly increased risk of abuse (Jones et al., 2012; Caldas & Betsy, 2014). Without this information, teachers, school leaders and support staff cannot be expected to intuitively understand the increased level of support and positive intervention which will assist in helping to create safer environments for students with cognitive disability (Robinson, 2012).

For future action:

Acknowledgement in relevant education policy of the increased level of risk of bullying and abuse to students with cognitive disability.

Training for school personnel about the increased risk of abuse to children and young people with cognitive disability and positive responses needed to recognize and respond to it in ways which enable rather than constrain children.

7.2 Addressing the barriers to keeping students safe

A series of barriers with systemic implications were identified in the research. Incidents of harm were often treated in isolation, rather than viewed as a pattern of behaviour. A focus on the diagnostic label of the student with disability, their behaviour or their 'vulnerability' at times prevented attention to the instigators of harm or abuse. There was little focus on looking to the cause of harassment, bullying and interpersonal harm to resolve it more completely for students. The opportunity to respond early and prevent harm escalating into more serious abuse was missed by education systems on multiple occasions. Appropriate policy and legislative frameworks were not applied in the early stages of abuse. Finally, there was a lack of shared learning from the experiences of students and their families, so that the same mistakes were repeated. These results are consistent with the findings of other large scale inquiries into abuse and disability hate crime (Smith, forthcoming).

For future action:

Clearer understanding of the motivations of perpetrators is needed to design better interventions to protect students experiencing these harms.

Promising practice in breaking the cycle of interpersonal abuse needs to be tested, evaluated and implemented in schools.

In this research, little evidence was found of students and families accessing policy and legal support for prevention, early intervention, remedy or redress of harms. Their knowledge of the law and of legal and human rights around education appeared limited in many instances. Many were unclear about their rights in relation to complaint making, and found the process draining and difficult. In the eyes of families, success or otherwise of strategies to keep students safe were dependent more on relationships with key

staff than on the enactment of policy. From the perspective of educators, a number of issues impacted on their capacity to implement policy, including training, the time to implement strategies and plans for students with complex support needs, and the willingness of all staff to involve students with disability in mainstream classes.

Some students can't/won't tell

A key finding from the research is the consistent message from young adults that there were multiple occasions when they did not tell others about the harm they experienced, finding it 'too hard to tell', especially in high school. While younger children by no means found it easy to talk about abuse and harm, they appeared more able to discuss these concerns with family members than older children. It is simply too difficult for some children to make a report of bullying or abuse, due to the nature of power relations, impairment, lack of family support, or school cultures.

For future action:

Mechanisms which proactively ensure the wellbeing and personal safety of students with more limited family support, and for older students, and where support staff who have good rapport and well developed relationships are able to ask them about their level of personal safety and any threats to it – and have a framework to respond to any concerns.

Teacher practice

In this study, participants from all groups, including educators spoke about practices of teachers, aides and school leaders which needed to be addressed to better safeguard and promote the rights of students with cognitive disability. This can be seen in two areas – in educational practice, and in the more general attitudes and values of school personnel.

More support is needed for teachers to better respond to the increased diversity of students in schools – in classrooms and in the playground. The compulsory online training module on the Disability Standards in Education recently rolled out to all NSW teachers, and the new Safe Schools Hub are positive and welcome initiatives in promoting awareness of the rights of students, and strategies to support classroom practice. However, neither of these initiatives contain a mechanism to identify and intervene where teacher practice is less than optimal, or worse, negative or abusive to students with disability.

The attitudes and values of school personnel to children with cognitive disability are not simply a personal issue. They impact on the relationship with the child, affecting the vigour with which harms are prevented and responded to. The attitudes and values of teachers, support staff and school leaders are also critical in establishing and sustaining a culture amongst students which values students with cognitive disability, upholds their equal right to safety, and in which student peers are more likely to take action if a student is being treated unfairly or comes to harm because of the words or behaviour or someone else. Lack of engagement and expressed and tacit discomfort around disability send clear messages to students and staff that students with disability are not equally valued, and help to create conditions which are ripe for bullying and other forms of interpersonal harm.

For future action:

Training and support for teachers, school leaders and support staff in supporting students with complex needs, mentoring, and monitoring of student safety.

Transport

Safety on transport was a significant concern to a considerable proportion of participants in the research. There appears to be a lack of clarity about the legal responsibility for the safety of students on public transport, with responsibility for physical safety of passengers clearly the remit of transport operators, but safety of students from assault by other students less clear cut. Many educators saw a moral responsibility and a duty of care for the safety of students on transport between home and school.

For future action:

Training for bus drivers and bus companies about preventing and responding to interpersonal harm between students; and about supporting students with cognitive disability. Enforcement of existing codes of conduct for student public transport travel, which allow for the exclusion of students who harass, bully or assault others.

Understanding the nature of regionality

Most of the experiences related in this research were not regional in nature – the consistency of students' and families' experiences with the existing literature indicates that their experiences are not unique to this regional area. However, there are some qualities of young people's experience which are brought into higher relief by living in a regional area. Services and supports are generally in shorter supply: the choice of schools is more limited, and students who have problems in one school may be less able to transfer to another school, particularly if they have higher support needs, as there are a limited number of special units and access to individual support is difficult. Transport to and from school is particularly difficult for young people who may experience abuse on buses, as there are few alternatives, particularly for children living out of town. Access to training for educators and other support staff in disability and child protection fields is limited in comparison to cities. Legal advice and advocacy is available, but generalist in nature.

For future action:

For regional students and families, increase access to information and resources in multiple formats which make provision for students and families from regional and rural areas (e.g. online, via phone).

7.3 Promoting personal safety for students with cognitive disability

The relationships between a number of interviewees and schools had been compromised by the protracted difficulties in resolving students' problems with safety. Safeguards against this are needed, such as the creation of whole school cultures in which abuse and harm is not tolerated, robust complaints frameworks with openness to feedback, and strong advocacy support for both students and families.

Establishing stronger frameworks and positive cultures

Educators spoke about how important a positive culture was in creating safety in schools, but children and young people said they did not feel recognised and valued at school. Being known and valued has been shown in previous research (Graham et al., 2014; Robinson et al., 2014) to have a protective element in young people's lives. Most educators talked about the importance of relationships in both preventing abuse and creating a culture in which students felt able to report abuse and harm. Students and families also discussed this, but few spoke about having these relationships present in their school lives. When students did have these relationships, they felt more confident that any problems would be addressed and that harm would be appropriately dealt with.

The importance of building rapport and positive relationships as a foundation between students with disability and at least a minimum number of key adults in the school is clear from this research and existing evidence in previous studies (Hoskin, 2010; Rowley et al., 2012; Salmon, 2013). Similarly, the

development of positive peer relationships through supported activities, well-evidenced buddy programs, increasing the empathy of fellow students so that they are more likely to report ill-treatment of another person, and guiding the choice of instructional strategies and activities that encourage positive social interaction have all been found to be protective (Prince & Hadwin, 2013; Robinson & Truscott, 2013).

Supporting all students, but particularly those with cognitive disability, in developing their own strategies to counter harm, and in developing resilience and coping strategies may help in minimising the incidence and impact of interpersonal harm. By coping strategies we mean proactive action which builds confidence to minimise the effect of ill treatment, such as supporting developing friendships or mutual interests with other students, attending self-defence and personal development courses, and practicing 'no, go, tell' type strategies with trusted adults. Supporting students in the playground in particular, and with social interaction may be of particular importance. This was a time when a lot of students experienced abuse at the hands of peers in our research.

For students to feel that abuse and harm is addressed within the school, all participants in this research saw the need for firm responses to incidents of harm, combined with whole-school initiatives aimed at supporting the development of a culture which does not tolerate violence or harm against any students. This is consistent with a considerable body of previous research, which discusses the importance of creating a safe climate for all students, and within this using specific tools to ensure that students are heard, believed and that both victim and instigator are appropriately supported, (in the case of children) disciplined or prosecuted (Rigby & Griffiths, 2010; Department for Children Schools and Families, 2008; Lodge, 2014a).

For future action:

Review policy and practice frameworks (such as the Safe Schools Hub) to ensure complaints management, abuse prevention, and whole-school approaches to safety sufficiently include students with cognitive disability, and ensure that all education staff are aware of and implement policy and practice in these domains.

Expand leadership training for principals and other school leaders to include elements covering the importance of safety, belonging and connection for students with cognitive disability, and examples of how this can be embedded in school practice.

Complaints

Students, families and child protection workers argued uniformly for schools to give more priority to resolving complaints when students or their families raise issues of harm, and to not to let interpersonal conflict between students (or targeting of students with cognitive disability by others) escalate by responding slowly or with limited vigour. They also were very much wanting a more transparent process so that they understood what would happen once they raised their concern. For students, this meant a clear and easy to comprehend process in which they could see some action being taken. For families, this meant a comprehensible policy, which explained how the school would respond, what they could expect in terms of action, and how they could take things further if not satisfied with the outcome. For both, building a culture of collaboration when complaints are made was crucial.

This accords with earlier research, which found a lack of accessible complaints processes in key complaint handling bodies has impacted on outcomes of complaints and has slowed progress on the rights of young people in this domain (French, Dardel, Price-Kelly, 2010). Making complaints systems more transparent, easier to access, easier to use, and more responsive would assist students and families both in making complaints and feeling that schools were interested in resolving students' problems. At a school level, a number of participants found complaints processes rested in individual staff (such as Deputy Principals). This worked well for some, but some families and students had no knowledge of other avenues they could follow when the response of this individual was not effective in resolving ongoing abuse. While it is appropriate and effective to have a senior staff member responsible for responding to serious concerns so

a sufficiently skilled person can be deployed in the role, this 'initial responder' needs to be connected to a clear policy tree, so students and families can fully understand and make use of policy, and their rights under the Disability Standards.

For future action:

Increased clarity in complaints processes at a local school and State policy level, so families and students know how to complain, what will happen if they complain, how the school will work with them to resolve the problem, what they can do if not satisfied with the outcome, and where they can get further assistance. Training for key staff and independent monitoring of the management of serious complaints will promote further transparency and enhance good practice.

Advocates

Involving an independent third party with an understanding of education and disability services systems, legal rights, collaborative planning, and facilitation may assist in opening possibilities and opportunities for creating innovative solutions to complex and vexing problems.

7.4 Upholding the legal and human rights of students with cognitive disability

The importance of connecting the protection frameworks for children, people with disability and students cannot be understated. This is particularly significant for children and young people with high and complex needs, who often engage with multiple service systems and providers. Not one student in this research had made use of criminal, civil or anti-discrimination law in relation to the harm they had experienced, although there were multiple instances in which they may have had reason to do so.

Embedding human rights in education policy and practice

In ratifying multiple UN Conventions, in particular The Universal Declaration of Human Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disability (2006), the Australian government has committed at the broadest level to upholding the rights of students with disability to be safe in and around their schools. These national commitments - to the rights of children to be protected, the rights of all people not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the rights of people with disability to be free from exploitation, violence and abuse and the right to safe inclusive education - need to be woven into policy and practice at state and local levels.

At a policy level, in this research the extensive amounts of guidance material available online was not (or not yet) being demonstrably translated into practice frameworks. The policy and practice material available through sites such as the Safe Schools Hub and Bullying No Way provides excellent input into taking a whole school approach to safety, developing resilience in students, creative and innovative ways to tackle bullying and harassment, and building partnerships with families, reflecting key policy documents such as the NSW Disability Action Plan and Every Student Every School. However, it was difficult to locate information in the level of detail needed to make a complaint or find out Department policy on abuse and neglect. For students with high and complex needs, there was little detailed information which would support practice change.

At a practice level, the experiences of many students and their families in this research did not reflect demonstrable uptake of this material. The tension between increasing workload, increasing complexity in students and available time which was mentioned by almost all educators may impact on the take up of these resources. The majority of key stakeholders did not discuss these key frameworks, relying instead on locally developed policy and practice responses to both complaints of abuse and harm, and to promoting safety at a whole school level.

For future action:

The UN Convention of the Rights of Persons with Disabilities and the National Disability Strategy be added to training programs on the Disability Standards for Education for school personnel to provide a more comprehensive understanding of the rights of children with disability.

Development and dissemination of practical information about promoting safety, mechanisms for responding to harm experienced by students, and complaints frameworks. Multiple modes of dissemination are needed to reach educators, professionals in parallel fields, and families and students.

Disability discrimination law – complaints, access and exclusion

The bulk of harms reported in this research by students and their families and key stakeholders occurred in mainstream education environments. At an individual level, they were more frequently instigated by students without disability towards students with cognitive disability, and in some cases by other students with disability. A significant number of reported harms were systemic in cause, involving a failure to provide needed supports or the removal of needed supports, resulting in harm to the student.

The levels of activity in discrimination actions in education and the range of situations represented at the Australian Human Rights Commission suggest that discrimination actions are assisting young people with cognitive disability to be accommodated in their schools when complaints at a school level have failed to reach a resolution. Our research, however, did not include any participants who had taken disability discrimination actions.

As noted in the legal review, there have so far been no court cases in the discrimination sphere about the lack of safe inclusive education for students with cognitive disability. With the implementation of the UN Convention on the Rights of Persons with Disability, a national commitment has been made that students with cognitive disability can access an inclusive, local education, with reasonable accommodation made of their support needs and effective individualized support measures. However, a number of policy responses since the ratification of the Convention have been slow to progress this commitment. For example, a recent decision by the Australian Government to focus on full implementation of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) to find out how many students with disability attend Australian schools, their locations and the support provided to them before commencing new revised disability loading for students with disability will delay this funding until 2016 at the earliest, leaving students without additional funded support in schools.

The exclusion of students with cognitive disability from school on the grounds of their behaviour is a contentious and difficult issue. While a particularly high profile case found it a legitimate act for the school to expel a student from school due to his violent and unsafe behaviour (*Purvis v New South Wales (Dept of Education and Training)* [2003] at 225), this was not an unanimous decision and a dissenting view was put that the school could have done more to assist the student, flaws in the definition of his impairment, and questioning the fairness of comparison of a student with cognitive impairment to one without.

Our research highlights the interaction between violent and angry behaviour in students with cognitive disability and being bullied, harassed, physically assaulted and otherwise ill-treated. This is consistent with a body of research which concludes that being a 'bully-victim' impairs students' sense of belonging and connection at school (Farmer et al., 2012; Lodge, 2014a; Swearer et al., 2012). Several students spoke of the levels of frustration they lived with due to ongoing ill-treatment from others, and how at times this burst out inappropriately. A number talked about significant pressure at home, including abuse, and the need for schools to understand the bigger picture of pressure in their lives. We do not condone violence of students against others, but argue here for more attention to the causes of young people's frustration and distress.

A significant number of students' experiences were consistent with the findings of the review of the *Disability Standards for Education*, particularly the weakness of accountability frameworks and the inaccessibility and complexity of complaints mechanisms and the lack of alternative options if complaints

to school administrators were not well received. The Standard 'Developing and implementing strategies and programs that are designed to eliminate harassment and victimisation of students with a disability' was particularly poorly implemented in the experience of the participants in this research, with little systemic effort reported by students, families or key stakeholders in this domain. The direct and indirect discrimination experienced by a number of students in this research was significant and not well recognized by them, particularly in the abuse they suffered on school transport, through having a lack of appropriate support provided at the (only available) school, and a lack of priority placed on ensuring the safety of students with behaviour support needs.

For future action:

We endorse the recommendation of the review into the Standards that the Attorney-General's Department give consideration in the consolidation of Commonwealth anti-discrimination laws to compliance and investigation of systemic breaches, improving the complaints process and developing a range of alternative dispute resolution options including mediation and arbitration.

The Australian Government Department of Education Safe Schools Hub includes material for education providers on supporting students with disability. A significant professional development program has been implemented during 2012-14, with all NSW teachers completing an online module focused on the *Disability Standards in Education*, additional online learning course in special needs education, and post-graduate scholarships. These are strong initiatives for improving the practice of teachers, and supported here. However, online learning may be of insufficient depth to resolve the substantial level of concern expressed by education and support providers in this research about supporting the diverse needs of learners in their classrooms. No participants in this research commented on either Learning and Support teams or specialist learning support teachers (key initiatives specified in the NSW Department of Education *Every Student, Every School* policy). The experience of individual support planning for several was poor, and based on the experiences of participants in this research, the initiatives spelt out in this policy to train educators in individualized planning which involves students and their families need to be either strengthened or fully implemented.

Criminal law

Some greater protection may be offered to students who experience violence and abuse in and around school through the Crimes Act and the Domestic and Personal Violence Act. In order for students to access this level of protection, schools need to recognize interpersonal harms as crimes, and take action to support students (and their families) to consider involving police. Students and those who support them also face well-recognized barriers in the criminal justice system in making statements to police, providing evidence in court which meets the high standard of proof that courts require to be convinced 'beyond reasonable doubt' of abuse, neglect and maltreatment.

In this research, no students and their families had experience of using criminal law to get redress for assaults, harassment, bullying or intimidation. Two families had attempted to involve police at the time of their son or daughter's abuse, but no charges were laid due to a lack of capacity of the student to give evidence in one case and a claim that either schools or police dealt with assault, but not both, in another. A lack of clarity demonstrated amongst some stakeholders about what level of harm required police response and what required police intervention might also have contributed to the experience of this family. One educator talked about proactively involving police in issues of cyberbullying between students to strong effect.

For future action:

Clarity is needed in policy and practice guidelines about when to involve external stakeholders, such as police. Families, students and external stakeholders need easy access to this information.

Civil and personal injury law

The limited number of cases and evidence of young people with cognitive disability receiving compensation for various injuries caused in the education setting draws attention to the fact that young people may not be well protected by civil law. Significant barriers preclude some people with cognitive impairment launching proceedings because of the need for an advocate and a lawyer, the associated risks of costs with launching a civil suit, and the need to be able to identify harm and articulate their concerns. There is a clear need for further research and policy attention in this area to identify why cases of abuse, neglect and maltreatment are not reaching a conclusive remedy from civil law proceedings.



8. Conclusion

Children and young people and their families told us about many different forms of harm and the ways in which this abuse impaired their school lives. Being harassed and bullied, physically assaulted, threatened and humiliated were ongoing and chronic forms of harm for some children and young who participated in this research. Resolving these situations was frequently difficult, and both students and their families talked about many instances where schools were unresponsive to their requests for help, complaints and repeated attempts to resolve interpersonal harm.

In some cases, young people and families felt that schools responded well when they experienced harm. On these occasions, teachers were proactive, they believed students, listened and took action to sort things out quickly. Families were treated seriously and courteously, and kept informed about progress. School leaders showed strong personal commitment to the safety of students and to resolving breaches of all students' rights to safety and to dealing with harassment, bullying, abuse and violence. This gave children and young people confidence that they could continue at school, that they could deal with future problems, and that their problems were seen as significant and important.

For educators, significant personal commitment to student's rights was expressed alongside significant tensions in managing increasing complexity in students, increasing expectations in teaching in mainstream classrooms, along with decreasing support resources. External stakeholders saw this tension in the lack of support provided to students for needed supports, and the consequent harms that evolved as their behaviour escalated through frustration. When leadership in schools was not felt to be strong, or disinterested in the rights of students with cognitive disability, their experience of harm was seen to be greater and the resolution of those harms seen to be poorer.

All of these perspectives and experiences were expressed within a particular legal and policy framework. The framework of laws and policies in this context provide access to a range of remedies for students whose rights are breached, across discrimination, criminal and civil law, and in education, disability and child protection policy domains. However, much of this remained unknown to the majority of participants in this research.

Better connecting education, disability and child protection at legal and policy points will improve rights information and access for students with cognitive disability who experience harm in and around school. The primary law reform finding of this project is not a need for new laws or policy, but better linkages between the existing frameworks.

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Legislation

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Australian Human Rights Commission Act 1986 (Cth)

Care and Protection Act 1998 (NSW)

Civil Liability Act (2002) NSW

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

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Ombudsman Amendment (Child and Protection and Community Service) Act 1998 (NSW)

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AT SCHOOL?

EXPLORING SAFETY AND HARM OF STUDENTS WITH
COGNITIVE DISABILITY IN AND AROUND SCHOOL

SALLY ROBINSON
DOMINIQUE MCGOVERN

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Southern Cross University

NOVEMBER 2014

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