

Education (General Provisions) and Other Legislation Amendment Bill 2024

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Queensland
Advocacy
for Inclusion

Education (General Provisions) and Other Legislation Amendment Bill 2024

**To Education, Employment, Training and Skills Committee
25th March 2024**

About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (QAI) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience guides our work and values.

QAI has been engaged in systems advocacy for over thirty five years, advocating for change through campaigns directed at attitudinal, law and policy reform.

QAI also provides individual advocacy services in the areas of human rights, disability discrimination, guardianship and administration, involuntary mental health treatment, criminal justice, NDIS appeals, and non-legal advocacy for young people with disability including in relation to education. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

Since 1 January 2022, QAI has also been funded by the Queensland Government to establish and co-ordinate the Queensland Independent Disability Advocacy Network (QIDAN). QIDAN members work collaboratively to raise the profile of disability advocacy while also working towards attitudinal, policy and legislative change for people with disability in Queensland.

Contents

QAI recommendations	4
Introduction	6
1. School disciplinary absence and enrolment decisions	7
Timeframes for disciplinary actions	9
Delegation of authority to notify a school disciplinary absence	10
Appeal rights for short term suspensions	11
Prescribing matters to consider before a decision to suspend or exclude in a Regulation	12
Cancellation of enrolment	14
Student support plans	15
2. Home education	18
3. Additional amendments to include	19
Make the use of SDAs a last resort	19
Recognise the intersectionality of students overrepresented in SDA statistics	20
Independent complaints and appeals process	20
Ensure students have access to educational materials	21
Right to representation	21
Informal exclusions	22
Data collection and accountability	22
Review criteria for issuing SDAs	23
Students' rights	23
Conclusion	24

QAI's recommendations

1. All timeframes should be prescribed in legislation, rather than in regulation.
2. The proposed timeframe for dealing with submissions against suspension and related matters, as provided for in Section 60G of the regulation in the Bill, be reduced to 20 school days after the chief executive receives the submission.
3. Include consequences for the Department if timeframes are not adhered to.
4. Include provision for students and families to appeal decisions outside of the proposed timeframes in exceptional circumstances.
5. Limit the number of suspensions a student can receive within a prescribed period of time before a principal must obtain approval from the chief executive to issue another suspension.
6. Legislate an appeal right for all short-term suspensions.
7. Require a principal to document their response to each of the matters listed when making a decision to suspend or exclude, and to provide these reasons in an accessible format to the student and their family within a prescribed period of time.
8. Require a principal to obtain information from the student's family and/or relevantly qualified professionals with regards to how a student's disability manifests itself in terms of behaviour.
9. Include a requirement to consult with the student, their family and other relevant persons with regards to whether further adjustments could better support the student with disability.
10. In relation to section 60D (5), QAI supports the submissions made by ATSILS with regards to this provision and their proposed redrafting of the section.
11. Move the list of matters to be considered by a principal when making an SDA decision from the regulation to the legislation.
12. Include a provision that requires a principal to put in place a Student support plan (SSP) for a relevant student.
13. Include students living in out of home care as a cohort of students eligible to receive an SSP.
14. Consider whether an alternative role, such as inclusion officer or First Nations liaison officer, should be jointly responsible with a principal for the making of an SSP.
15. The Department consult with experts such as academics from QUT's Centre for Inclusive Education (C4IE) to develop a plan on how to roll out Multi-Tiered Systems of Support (MTSS) across Queensland state schools.

16. Remove the proposed changes to home education until further information and clarity is provided and more adequate consultation has occurred with the homeschooling community.
17. Include a provision in legislation that requires the Department of Education to avoid the use of exclusionary discipline unless it is necessary as a last resort to avert the risk of serious harm to the student, other students or staff.
18. Develop nuanced policy responses that respond to the intersecting identities of students disproportionately receiving SDAs, preventing the siloing of these students.
19. Establish an independent complaints process.
20. Clarify the decisions for which an external right to review at QCAT applies.
21. All students with disability who receive an SDA should be automatically referred to an individual advocate.
22. Include a provision that ensures students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline.
23. Include a legislative provision that requires a principal to obtain input from a student prior to an SDA decision being made.
24. Collect and publish data on the use of informal exclusions.
25. Collect and publish disaggregated data on the use of SDAs in an annual report to the Minister.
26. Establish an independent board to oversee the implementation of all policies, rules, regulations and legislation regarding SDAs to ensure they are working in the best interests of students.
27. Develop inclusion scorecards for every Queensland state school with information on a school's SDA use.
28. Review the criteria for issuing SDAs and reduce the number of permissible reasons for issuing an SDA, including banning the use of SDAs for minor incidents.
29. Include a provision that makes specific reference to a person's human right to an inclusive education.

Introduction

QAI welcomes the opportunity to provide feedback on the *Education (General Provisions) and Other Legislation Amendment Bill 2024* ('the Bill'). QAI acknowledges the Department of Education's recent efforts to address the overrepresentation of students with disability in school disciplinary absence statistics and we welcome the ongoing dialogue on this important issue.

QAI particularly welcomes the amendments to the Guiding principles that recognise education should be provided in a way that recognises the educational needs of children or young people of all abilities and from all backgrounds and which promotes an inclusive, safe and supportive learning environment.

We note, however, the exceptionally short time frame for public consultation on this Bill. We are concerned this will limit the quantity and quality of feedback able to be provided by the wider community. While an earlier version of this Bill was previously shared with select stakeholders for consultation, this process did not engage all relevant or interested stakeholders, many of whom are now viewing the proposed changes for the first time with very little time in which to respond. We have heard the changes regarding home education are causing particular distress among the homeschooling community and we recommend further consultation on these changes.

Overall, QAI recommends the Committee make improvements to the Bill that will ensure the legislative framework is more inclusive and human rights focused. Our submission discusses the proposed changes to school disciplinary absence and enrolment decisions, home education and concludes with a list of additional amendments that QAI urges the Committee to include.

1. School disciplinary absence and enrolment decisions

We welcome the recognition by the Honorable Dianne Farmer MP that “*Right now, the number of Aboriginal and Torres Strait Islander students—and students with a disability—receiving suspension and exclusion is higher than the rest of the cohort. We need to do something different if we are to provide equal opportunities and address this unacceptable pattern.*”¹

Since 2022, QAI, together with the Aboriginal and Torres Strait Islander Legal Service (ATSILS), Youth Advocacy Centre (YAC), PeakCare Qld and Youth Affairs Network Qld (YANQ), have been leading the *A Right to Learn* campaign which seeks to address the disproportionate use of school suspensions and exclusions on students with disability.² This is based upon research by QAI and the Centre for Inclusive Education (C4IE) which found evidence of disproportionate and excessive suspensions for First Nations students, students with disability and students in out of home care. For example, students with a disability made up only 18.9% of enrolments in 2020 yet received 49.2% of all short suspensions (1-10 days). This equates to 2.18 suspensions on average per student.³

Our research also showed:

- When students are in more than one of these groups, the risk of suspension is even greater.
- Students receiving social-emotional adjustments at school, such as neurodiverse students, are issued *repeat* suspensions at a higher rate than students with other types of disability; and
- Disability is the most common factor among suspended students, raising urgent questions as to whether students with disability are receiving the adjustments and support to which they are entitled under legislation.

¹ Explanatory speech,

https://documents.parliament.qld.gov.au/events/han/2024/2024_03_06_WEEKLY.pdf#page=58 p480

² A Right to Learn. [online] Available at: <https://www.arighttolearn.com.au/> [Accessed 19 Mar. 2024].

³ Graham, L.J., Callula Killingly, Alexander, M. and Wiggans, S. (2023). Suspensions in QLD state schools, 2016–2020: overrepresentation, intersectionality and disproportionate risk. Australian Educational Researcher. doi:<https://doi.org/10.1007/s13384-023-00652-6>.

All of this is occurring despite overwhelming evidence as to the ineffectiveness of school disciplinary absences ('SDA's) in reducing behaviours of concern at school. Graham highlights the fundamentally flawed assumption upon which school disciplinary absences are based – that is, the assumption that challenging behaviour is a conscious choice enacted by individuals who can self-regulate their emotions.⁴ By punishing students who exhibit challenging behaviours, it is presumed that SDAs will act as a deterrent and change the student's decision-making prior to 'choosing' their behaviour again in future. However, this grossly misconstrues the nature of 'challenging behaviour', which is often a reflex communication strategy for an individual with communication difficulties in situations of heightened distress. It can also be a manifestation of a person's disability.

Failing to provide individualised support and reasonable adjustments leads to escalations in behaviour that would otherwise be avoided if supports appropriate to a student's needs were in place. Failing to ensure teachers are adequately skilled and equipped to support a classroom full of diverse learners also means both students and teachers are being set up to fail.

The disproportionate and excessive use of SDAs that subsequently occurs creates various problems for individuals, families and the broader community. Students removed from school following a suspension or exclusion are denied access to educational materials, learning opportunities and critical chances for relationship building and skill development. Students do not always receive work to complete at home or appropriate support to continue their education.⁵ They report feeling anxious, humiliated, and isolated from their peers, all of which then impacts their ability to successfully reintegrate back into school following their absence.

Sometimes students are forced to move schools but struggle to enrol in other schools due to enrolment management plans and gatekeeping practices of some school principals, leaving

⁴ Graham, L. (2020) Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study; *International Journal of Inclusive Education*, 24:14, 1473-1493

⁵ Quin, D., & Hemphill, S. A. (2014). Students' experiences of school suspension. *Health Promotion Journal of Australia*, 25(1), 52-58

the student faced with either Special Education (if it is even an option due to restricted eligibility) or home schooling and thus reinforcing the segregated model that inclusive education policies are seeking to overcome. This is particularly problematic for students in rural or remote parts of Queensland, where there are limited or no other schools in which to enrol.

The long-term impacts of school disciplinary absences can also be significant. Research has demonstrated that students who have received SDAs can go on to experience poorer mental health, prolonged unemployment, increased stigma and feelings of rejection, and an increased risk of homelessness.⁶

Whilst the Department's inclusive education policies increasingly reference human rights principles and an intention to ensure students with disabilities access an education on an equal basis with others, there continues to be a gap between policy and practice that must urgently be addressed.

With this context in mind, QAI provides the following comments regarding the proposed changes to SDA decision-making processes:

Timeframes for disciplinary actions

The proposed timeframes for decisions and processes relating to SDAs are too long. The timeframes need to be considered together and viewed as consecutive periods of time rather than seen as isolated periods of time for distinct and unrelated decisions. The cumulative impact of these otherwise reasonable timeframes can be significant for students and families.

QAI understands that a delicate balance needs to be struck between ensuring timely decision-making while allowing sufficient time for decision-makers to collate the relevant information to make their decision. However, we believe that a reasonable balance has not been struck. While the amendment to clarify that notice about a suspension must be issued

⁶ Graham, L. (2020) Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study; *International Journal of Inclusive Education*, 24:14, 1473-1493

within one school day is welcome⁷, 40 school days for the department to respond to a student's appeal against a decision to suspend is still too long.⁸

Extended timeframes can lead to students missing out on a significant and completely unreasonable amount of school time. This can become exacerbated when the student seeks enrolment at a different school, experiences gatekeeping and is refused enrolment there as well, keeping the student in a cycle of appeals and reviews and all the while missing out on vital education.

QAI therefore proposes that the proposed timeframe for dealing with submissions against suspension and related matters, as provided for in Section 60G of the regulation in the Bill, be reduced to 20 school days after the chief executive receives the submission. This would bring this timeframe into alignment with that afforded to similar SDA decisions.

QAI is also of the view that all timeframes should be prescribed in legislation, rather than in regulation. The Bill prescribes some timeframes for suspension decisions in the regulation⁹, whereas some timeframes for exclusion decisions are prescribed in the legislation.¹⁰ This will create an unnecessary and unwelcome level of inconsistency and should be addressed by the Committee. For maximum accountability, all timeframes should be prescribed in legislation.

Further, we recommend strengthening the Bill to enhance the accountability of SDA decision-makers. For example, what are the consequences for the department if the timeframes are not adhered to? There is also no provision for students and families to appeal decisions outside of the proposed timeframes in exceptional circumstances, which we recommend be included in the Bill.

Delegation of authority to notify a school disciplinary absence

QAI supports the amendment to allow the principal to delegate the telling of a student of a suspension to a deputy principal or another teacher in the school who has specific

⁷ Section 60E of the Bill

⁸ Section 60G of the Bill

⁹ See for example, clause 78 of the Bill

¹⁰ See for example, clause 89 of the Bill

responsibility for disciplinary decisions. However, there is a risk that the delegated authority will simply become a messenger, unable to provide all the relevant information about the reasons for the decision. The student and family may still want to speak with the principal (as the decision-maker) and thus it could cause further distress and delays to the process while failing to alleviate the principal's workload.

It seems that the proposed amendments seek to more easily accommodate SDA decision-making rather than actively try and reduce it. It is therefore recommended that these changes be accompanied by amendments that introduce limits to the unfettered discretion currently exercised by principals regarding SDAs.

For example, Australian best practice standards require principals to seek approval from the department before issuing multiple suspensions to the same student¹¹, yet this is not currently required in Queensland. This has also been recently recommended by the Disability Royal Commission (see recommendation 7.2).

This change, among others, would provide more oversight of the decision-making practices of individual principals. They would lead to better reporting and would help to identify differences between schools regarding SDAs, thus enabling early identification of inequitable and inappropriate use of SDAs for certain groups of students, such as students with disability, who typically receive repeated suspensions to no effect.

Appeal rights for short term suspensions

QAI supports the introduction of a right to appeal for short suspensions where the student has received more than a total of 11 school days of short suspensions in a calendar year. However, we consider that appeal rights for short-term suspensions should **not** be confined to this situation. In QAI's view, all decisions to issue a suspension, whether the suspension is for 1, 5 or 20 school days, should be appealable.

¹¹ Government of South Australia Department of Education, "Suspension and Exclusion Information for Parents and Carers"; Victoria State Government Training and Education, "Procedures for Suspension"; Department of Education WA, "Requirements Related to the Student Behaviour in Public Schools Policy."

This is because SDAs remain on a student’s record and can negatively impact their enrolment applications at other schools, not to mention the significant negative consequences they bring for students, families and the wider community.¹² An inappropriate short-term suspension, regardless of the total number of days for which a student has previously been suspended, should therefore have an avenue for merits review.

Some students also only attend school for half a day, or for a certain number of hours per day, rather than a “full” school day. It is unclear how the threshold of 11 or more days of short suspensions in a calendar year will therefore be met by these students, with a potential for the provision to apply inequitably to these students (many of whom will be students with disability).

Rather than limiting the appeal rights of students who receive short-term suspensions and confining them to certain situations, limiting the number of *times* a student can receive a short-term suspension in a given period of time without obtaining higher approval would be preferable, in addition to legislating a blanket right of appeal for all short-term suspensions.

Prescribing matters to consider before a decision to suspend or exclude in a Regulation

QAI welcomes the proposal to prescribe matters that a principal must consider prior to issuing an SDA¹³. This is a positive step that will improve the accountability and transparency of SDA decision-making. To ensure the achievement of this objective, QAI recommends adding a provision that requires a principal or chief executive to document their response to each of the matters listed when making a decision to suspend or exclude, and to provide these reasons in an accessible format to the student and their family within a prescribed period of time.

Regarding subsection (4) of sections 60D and 60J of the regulation as drafted in the Bill (i.e. that consideration “*For a student with disability that is relevant to the suspension behaviour, the matters include- (a) adjustments made or other action taken to support the student in*

¹² See [QAI and ATSIL’s report for the Queensland Human Rights Commissioner](#), for more detail.

¹³ Clause 77, Clause 84, Clause 87

relation to the student's disability at the school; and (b) whether further adjustments or action could be considered by the principal or other staff of the school to better support the student in relation to the student's disability at the school) the wording "*disability that is relevant to the suspension behaviour*" is concerning. It implies that the decision-maker (i.e. the principal) will determine whether a student's disability is relevant to the suspension behaviour. This is concerning because principals are not necessarily best placed to determine this issue and some principals have shown very poor understandings of disability related matters. It also creates a possibility that some principals will punitively decide that a student's disability is *not* relevant to the suspension behaviour, therefore precluding them from having to consider the matters subsequently listed in (4)(a) and (b). While it is presumed that some principals may take advice from the student's family and/or relevantly qualified professionals with regards to how the student's disability manifests itself in terms of behaviour, this should be stipulated in and required by legislation to avoid doubt and to ensure principals without the requisite understanding of a student's disability are not able to make this determination alone and without all the relevant information. The Bill should therefore be amended to require this determination to be based upon all relevant information, including information provided by the student, their family and any other relevant professionals that may be involved.

We also observe a difference in the wording used in (4)(a) and (4)(b). While (4)(a) references action taken "at the school", (4)(b) references action considered by the "principal or other staff of the school". We suggest the use of consistent language across these provisions to avoid potential confusion or interpretation difficulties.

Further, in relation to whether further adjustments could better support the student with disability, we believe the student and family's perspective on this should be ascertained as part of this consideration. In many instances, students with disability are suspended or excluded from school due to insufficient reasonable adjustments. While the school may consider that the adjustments being made are sufficient, or unreasonable and therefore not provided, the student and/or their family will typically hold a different view. This difference in opinion can shed light on what supports are missing for the student and can potentially avoid similar incidents from occurring again in the future. A requirement to consult with the

student, their family and other relevant persons must be added to the legislation and not just left to policy and best practice guidelines for principals. Our experience tells us that some principals fail to follow this vital aspect of the policy, so having it prescribed in legislation would act as an important safeguard. This is also a recommendation of the Disability Royal Commission (see recommendation 7.2).

In relation to section 60D (5), QAI supports the submissions made by ATSILS with regards to this provision and their proposed redrafting of the section. Requiring a school to be culturally safe is a stronger legislative obligation (as was originally proposed in earlier versions of the Bill) than simply requiring a school to recognise and support a student's cultural background. We echo the recommendation of ATSILS, for principals to also consider the effect of the school environment on the suspension behaviour, any unique circumstances or risk factors that might apply to the student and the impact of disruption to participation in schooling on the student in the context of those risk factors, including the risk of disengagement with education and potential poor outcomes for the child.

Finally, QAI submits that the list of matters to be considered by a principal when issuing an SDA should be contained within legislation, rather than regulation, to avoid unwelcome changes being made without proper consultation and scrutiny.

Cancellation of enrolment

QAI has longstanding concerns regarding the grounds for which a principal can cancel a student's enrolment under section 317 of the Bill. While the amendment to require a principal to give a show cause notice prior to cancelling a student's enrolment (a period of 30 days) is welcome, QAI has long held concern about the discretion afforded to principals to determine if a "*student's behaviour amounts to a refusal to participate in the educational program provided at the school.*"¹⁴ Again, this requires a nuanced understanding of a student's behaviour and for students with disability, we know that their behaviour can be frequently misunderstood as truancy whereas in many situations, a student's inability to participate is likely to be the result of an inaccessible learning environment. We also note with concern

¹⁴ Section 317(1) of the Bill

that, while submissions against a proposed cancellation of enrolment are permitted, many students with disability and their families require assistance to complete this process and yet there is no automatic right to representation or referral to an advocate or lawyer when an SDA decision is made – please see our below section on additional amendments to include.

Student support plans

The proposed introduction of Student Support Plans ('SSP') for students in particular cohort groups, such as First Nations students and students with disability, is a welcome recognition of the concerning fact that SDAs are currently being issued disproportionately to certain students.¹⁵ QAI supports this amendment and the requirement for the chief executive to make a policy about SSPs, as per section 321 of the Bill. However, we consider that the Bill should go further and include a provision that *requires* a principal to put in place an SSP for a relevant student, to ensure the policy is adhered to and to provide greater accountability for students and families.

The proposal that the policy made under section 321 must provide for matters including the involvement of the student and family in the making of an SSP is encouraging¹⁶. We consider that the student's relevant allied health professionals should also be consulted and involved in the development of the SSP, if the student or family requests this to occur.

QAI also notes that the proposed amendments relating to SSPs do not apply to students living in out home care. A newly published research article, titled '*Suspensions in QLD state schools, 2016-2020: overrepresentation, intersectionality and disproportionate risk*' has highlighted that students in out of home care are also among the students most commonly receiving multiple SDAs. For example, in 2020, students in out of home care had 3.54 the risk of short suspension.¹⁷ While students in out of home care typically have education support plans, their efficacy and success is questionable given the continued overrepresentation of

¹⁵ Graham, L. J et al (2023) *Suspensions in QLD state schools, 2016-2020: overrepresentation, intersectionality and disproportionate risk*. The Australian Educational Researcher, <https://doi.org/10.1007/s13384-023-00652-6>

¹⁶ Section 322(1)(a) of the Bill

¹⁷ Ibid, page 16

students in out of home care in SDA statistics. If the purpose of an SSP is to reduce the likelihood of further suspension or exclusion, QAI strongly recommends they also apply to students in out of home care.

While SSPs are a welcome and proactive initiative to ensure targeted support is given to students who most need it, QAI has some remaining questions.

1. What kind of support will be made available under an SSP?
2. Will the support made available under SSPs require additional funding and resourcing from the government, or is it anticipated that SSPs will utilise existing supports and services?

There is also potential difficulty with a principal being solely responsible for making an SSP for a student they have recently suspended or excluded. In QAI's experience, relations between school principals and students and their families can be fragile following an SDA, particularly when the student and family perceive that the SDA occurred because the school failed to provide the required reasonable adjustments to the student (a decision that would have been made by the principal). QAI therefore recommends the department considers whether an alternative role, such as inclusion officer or First Nations liaison officer, should be jointly responsible for the making of an SSP. This would help to address any potential (real or perceived) conflict of interest occurring if the principal solely has responsibility for coordinating the supports that would assist a student they have just suspended or excluded. It would also help to mitigate against the inherent power imbalance between principals and students and their families. The Bill should therefore be amended to reflect the possibility that other people might have responsibility for the making of an SSP.

Further, QAI hopes that SSPs will not be seen as the sole solution to the overrepresentation of marginalised students in SDA statistics. The disproportionate use of SDAs among certain students reflects an education system that is failing to meet the needs of all learners. Coordinating specific support to certain individual students will certainly be helpful, but it will not address the root causes of their exclusion.

In failing to address inaccessible teaching strategies and learning environments, students with disability will continue to be pathologized and seen as a problem. In failing to consider the environmental factors that can trigger challenging behaviour, students with disability will unfairly and solely carry the burden of change, blamed for behaviour that occurs because of factors that lie beyond their control. Negative attitudes towards disability will remain, further entrenching stigma and resulting in discriminatory practices.

There is a risk that in making SSPs for certain students, efforts towards achieving inclusion will be limited to specific individuals, rather than addressing the system-wide processes and barriers that perpetuate the need for some of those supports in the first place. This will be particularly true if the support in an SSP is not new or additional programs but is existing support available which for many students, is insufficient and inadequate.

An inclusive education system is one which recognises the right of every young person to be welcomed as a valued learner and involves adapting learning environments and teaching approaches to ensure the young person can participate in education on an equal basis with others.¹⁸ SSPs may be a part of this, but they alone will not be sufficient.

That is why QAI advocates for the adoption of models such as the Multi-Tiered Systems of Support (MTSS) model. MTSS is an education-based support structure that focuses on layering support to students to identify those with additional academic, behavioural, and social-emotional learning needs.¹⁹ MTSS prioritises inclusion through focusing on group learning, providing *all* students (regardless of disability) with a level of support and guidance and aims to be responsive to the changing needs of students.²⁰

MTSS was a key recommendation of the inquiry into suspensions and exclusions in South Australia. MTSS emphasizes the importance of problem-solving, instruction and intervention in educational environments.²¹ MTSS includes three tiers, the first being a universal layer of

¹⁸ Australian Coalition for Inclusive Education, “*Driving change: A Roadmap for achieving inclusive education in Australia*”, February 2021, p4

¹⁹ Linda J Graham et al., “Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools,” 2020, pp.140-141.

²⁰ Ibid pp.140-141

²¹ Ibid pp.140-142

support designed to provide assistance and instruction to all students. The first tier is also used to identify students requiring additional support.²² These students are then introduced into the second tier, that focuses on small group learning and instruction. From tier two, the students needing additional, individualized support or guidance are identified. The third tier is intended to only be used sparingly as it takes students away from the classroom.²³

It requires the department to do things differently for *all* students and to provide additional support for *some* (this being determined by need rather than whether a student belongs to a specified cohort). It also requires the injection of additional resources, along with modifications to the way students are taught by teachers.

QAI therefore recommends the department consult with experts such as academics from QUT's Centre for Inclusive Education (C4IE) who have researched this topic extensively, to develop a plan on how to roll out MTSS across Queensland state schools.

2. Home Education

QAI is aware of significant concern within the home-schooling community regarding proposed changes to home education in the Bill. We have heard that many families are worried about the changes and in particular, how they might impact students with disability. Many families have expressed they were not consulted regarding the proposed changes and are frustrated with the incredibly short time frame in which to provide feedback to the Committee.

In QAI's experience, many students with disability who experience barriers to inclusion in mainstream schools often resort to trialing home education. It is an onerous undertaking for parents and one that is rarely taken on lightly. QAI is aware of concerns regarding the proposal to remove provisional registration and how this might impact families who need to adapt the curriculum for a student with disability. In particular, there is concern that this

²² Ibid pp.141-145

²³ Ibid pp.141-145

change could create a scenario whereby a student who is experiencing significant barriers to inclusion in a mainstream school could be forced to remain there longer than would otherwise be necessary while sufficient adaptations to the curriculum occur.

QAI therefore urges the Committee to consider removing the proposed changes to home education until further information and clarity is provided and more adequate consultation has occurred with the homeschooling community.

3. Additional amendments to include

QAI recommends the Bill also contains provisions for the following critical and much needed reforms:

Make the use of SDAs a last resort

The Disability Royal Commission recommended that “*all States and territory educational authorities... review all instruments regulating exclusionary discipline to ensure they... avoid the use of exclusionary discipline with students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff*”²⁴ (Recommendation 7.2).

Currently, the Bill permits the use of SDAs at a much lower threshold – that of “best interests”. This directly contributes to the continued disproportionate use of SDAs on students with disability.

This Bill and the current examination of SDA decision-making is therefore a timely opportunity to enact this key recommendation from the Disability Royal Commission to ensure SDAs are only used as a last resort measure. While departmental policy may stipulate that the use of SDAs is a last resort measure, this does not provide sufficient accountability

²⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation (2023) Inclusive education, employment and housing – summary and recommendations. Final Report Volume 7, page 13

given the extraordinary, unfettered discretion currently exercised by principals with regards to SDAs and the minimal level of oversight of their decision-making.

Recognise the intersectionality of students overrepresented in SDA statistics

Research shows that SDAs are disproportionately given to students with disability, First Nations students and students in out of home care.²⁵ However, these categories of students are not homogenous and students can and do belong to multiple categories. It is inaccurate to simply view their needs through one lens. Many First Nations students, for example, live with disability, and research shows that indigenous students with a disability are most affected by SDAs when students belong to two or more priority equity groups.²⁶ Indeed, the risk of suspension increases with a student's increasing intersectionality.²⁷ The needs of these priority cohorts are therefore complex, requiring nuanced policy responses that respond to their needs holistically and which prevent the siloing of their intersecting identities.²⁸

Independent complaints and appeals process

QAI is aware of significant inconsistencies and inadequacies in the Department's current complaints and appeal processes. Complaints are not currently reviewed by an independent entity. QAI is aware of at least one instance of a complaint being referred by the Regional Office back to the original decision-maker for determination, despite this not being permitted by the legislation.²⁹

Complaints and appeal processes can also be extremely lengthy and cumbersome for students and families to endure, not to mention confusing. For example, an internal review of a suspension can take up to 40 school days to complete, during which time the student may not be accessing any education (with the approach differing between regional offices). Permanent exclusion decisions can be reviewed initially and then annually, while a refusal to

²⁵ See for example, Graham, L. J et al (2023) *Suspensions in QLD state schools, 2016-2020: overrepresentation, intersectionality and disproportionate risk*. The Australian Educational Researcher, <https://doi.org/10.1007/s13384-023-00652-6>

²⁶ Ibid, page 13

²⁷ Ibid, page 19

²⁸ Ibid

²⁹ Education (General Provisions) Act 2006 (Qld), s 313, 392.

enrol decision can be reviewed externally by Queensland’s Civil and Administrative Tribunal (QCAT). In the legislation, there is a right to external review for a ‘review of a review decision’³⁰ but it is very unclear which decisions this right applies to. It is not listed as applicable to all SDA decisions according to information provided by the Department on their website, yet it is seemingly provided for in legislation.

This inquiry is therefore a timely opportunity to improve current complaints and appeals processes, including by establishing an independent complaints process and by clarifying the decisions for which an external right to review at QCAT applies. It is QAI’s view that this right should apply to all appealable and reviewable decisions.

Ensure students have access to educational materials

Additionally, in line with the Disability Royal Commission’s final report, the Bill should include a provision that ensures students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline.³¹ Currently, section 284 of the legislation only requires principals to take ‘reasonable steps’ to arrange for a student’s access to an educational program during a suspension. This legislative obligation should be stronger.

Right to representation

All students with disability who receive an SDA should be automatically referred to an individual advocate. This automatic right to representation will help to ensure procedural fairness and will help to address the power imbalance between principals, schools and students and their families. Similarly, there should be provision in legislation to require a principal to obtain input from a student prior to an SDA decision being made. While this is present in policy, QAI is aware of instances where this has not occurred and we consider it should therefore be prescribed in legislation.

³⁰ Education (General Provisions) Act 2006 (Qld), s 394.

³¹ Royal Commission into Violence, Abuse, Neglect and Exploitation (2023) Inclusive education, employment and housing – summary and recommendations. Final Report Volume 7, page 14

Informal exclusions

We know that informal exclusions can progress to longer, more formal absences. An informal exclusion may occur when a teacher phones a student's parent and requests that they take their child home. As removing a child from school fails to address the underlying issue resulting in the behaviour of concern, these informal exclusions tend to happen again. Before long, the student receives a suspension, perhaps initially short-term and then long-term, and subsequently experiences more severe suspensions and exclusions over time.³²

The Department should therefore be required to collect and publish data on the use of informal exclusions. This could be added to publicly available information on SDAs.

Data collection and accountability

Without sophisticated data that accurately captures key demographic information (including which students are receiving SDAs, for which behaviours and how often), effective policies that successfully reduce the prevalence of SDAs will remain elusive.

For example, increases in the number of incidents reported may give the impression that there are very many 'badly behaved students' who are increasing in number, when the reality could instead be that there is a much smaller number of very vulnerable students receiving very many SDAs.³³

Disaggregated data on the use of SDAs must therefore be collected and made freely accessible to the public. This includes tracking the use of informal exclusions, the number of SDAs versus the number of students who receive an SDA, the intersectional characteristics of the students receiving SDAs, as well as the frequency with which some students receive multiple and repeat suspensions.

³² Graham et al. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. The Centre for Inclusive Education, QUT: Brisbane, QLD

³³ Graham, L.J., Callula Killingly, Alexander, M. and Wiggans, S. (2023). *Suspensions in QLD state schools, 2016–2020: overrepresentation, intersectionality and disproportionate risk*. *Australian Educational Researcher*. doi:<https://doi.org/10.1007/s13384-023-00652-6>, page 2

We recommend the Bill is amended to include a requirement for the Department to provide this information in an annual report to the Minister. The report should also include data on the types of disabilities held by students who receive SDAs as well as the relevant NCCD adjustment categories, and the reason for the SDAs.

In addition to an annual report to Parliament, we recommend the establishment of an independent board to oversee the implementation of all policies, rules, regulations and legislation regarding SDAs to ensure they are working in the best interests of students. The board would then provide advice to government on areas for improvement and highlight areas that are working well. We also recommend the development of inclusion scorecards for every Queensland state school with information on a school's SDA use.

Review criteria for issuing SDAs

Review the criteria for issuing SDAs and reduce the number of permissible reasons for issuing an SDA, including banning the use of SDAs for minor incidents.

Students' rights

It is clear that more needs to be done to ensure that powers enshrined in the legislation are exercised in a manner that upholds a child's human right to an inclusive education. While the Department's inclusive education policy states its intention to work towards a more inclusive education system that means students can access and fully participate in learning alongside their similar aged peers, it is apparent that current legislation and policy is insufficient to ensure that every student is able to access an education on an equal basis with others.

Despite the welcome amendments in Clause 18 of the Bill, we believe the Bill should be firmly grounded in a child's human right to an inclusive education.

We therefore recommend the Bill be amended to include specific reference to a child's human right to an inclusive education.

Conclusion

We need alternative solutions to SDAs that effectively address behaviours of concerns whilst keeping students engaged in the education system. We need to change our language around discipline, by ceasing to ‘punish’ students and ‘supporting’ them instead.

When the underlying reasons for a suspension are not effectively addressed, a vicious cycle of repeat suspensions can occur, with huge costs to students and a tendency to reinforce the behaviours for which it was issued.³⁴

There are better alternatives that are more consistent with the observance of the human rights of Queensland school students. The overuse of a punitive approach instead of a greater use of more supportive models is neither necessary nor proportionate. The lack of oversight of such practices and the absence of detailed data further suggests a failure to properly consider and adhere to the rights of the child.

We need to better understand why certain students, including students with disability, are being disproportionately excluded from schools and realise the broader implications of these practices. This is vital if Queensland is to successfully ensure that all students have access to an education that meets their needs and that certain students are not unfairly and disproportionately disadvantaged in the realisation of this most fundamental of human rights.

QAI thanks the committee for the opportunity to contribute to this inquiry. We are happy to provide further information or clarification of any of the matters raised in this submission upon request. We also consent to the full publication of our submission on the inquiry website.

³⁴ Wiley et al., 2020, as cited in Graham, L. J et al (2023) *Suspensions in QLD state schools, 2016-2020: overrepresentation, intersectionality and disproportionate risk*. The Australian Educational Researcher, <https://doi.org/10.1007/s13384-023-00652-6>