

Education (General Provisions) and Other Legislation Amendment Bill 2024

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QUT's Centre for Inclusive Education (C4IE) is founded on an understanding that inclusive education is a fundamental human right that enables all other rights. The Centre exists to produce research that will provide all children and young people with high-quality, inclusive, and equitable opportunities to learn and develop as independent and valued human beings. C4IE makes this submission to the **Education (General Provisions) and Other Legislation Amendment Bill 2024** into the Queensland Parliament.

C4IE is pleased to see legislative change on the Queensland Government's agenda, given that **our research has long identified the negative impacts of the 2014 changes to the Education Act by the former Campbell Newman LNP government** (Graham, 2020). Among other things, these changes enhanced principals' power to use exclusionary discipline and removed the right to appeal short suspensions, whilst also increasing the length of short suspensions from 1-5 days to 1-10 days (Carden, 2018). Our peer-reviewed published research has shown that these 2014 changes to the Education Act interacted with two other system reforms, one of which was a reduction in the school starting age, resulting in a doubling and then tripling in the number of suspensions of children in Prep, rates that have been sustained over time (Graham, 2020). Using the natural experiment of the second system reform, which involved the transition of Year 7 from the primary to secondary phase of schooling, this research also demonstrated that the doubling of suspensions in Year 7 in 2015 is more attributable to school environment than it is to student behaviour. First published online in 2018, this paper also presented evidence from decades of empirical research to outline the ill-effects effects of suspension and exclusion to argue for a reversal of those legislative changes. Unfortunately, little changed.

In 2022, we investigated the overrepresentation of Indigenous students in Queensland state school suspensions and exclusions and found that this group is grossly overrepresented. We used sophisticated statistical techniques to show that the use of exclusionary discipline is increasing at a *faster* rate for Indigenous students than it is for non-Indigenous students, leading to an increase in disproportionality over time. For example, in 2019, there were more than 700 suspensions per 1000 Indigenous students in Year 8, compared to less than 300 suspensions per 1000 non-Indigenous students. Notably, we once again identified patterns that implicate school factors as opposed to individual student factors. For example, we detected significantly higher rates of suspension in one administrative region (Darling Downs South West) that cannot be attributed to student population density. We also showed that Indigenous students are most overrepresented in suspensions for disruptive and disengaged behaviours, a category comprising three highly subjective reasons for suspension, one of which is truancy. Truancy is an important indicator that not all is well in the school environment and should never be reinforced through exclusionary discipline. **The findings from this research provide compelling evidence for reform of the permissible reasons for suspension and exclusion in Queensland.**

Importantly, in this paper we questioned whether and how this disproportionate use of exclusionary discipline against Indigenous students in Queensland is contributing to our own "school-to-prison pipeline" noting that Indigenous children and young people account for only 7% of the 10 to 17-year-old population in Queensland but 55% of those under youth justice supervision (Graham et al., 2023a). In the published paper, we argued *again* for comprehensive legislative reform and, drawing on our experience conducting the [Inquiry into Suspension, Exclusion and Expulsion processes in South Australian government schools](#) (Graham et al., 2020), **explicitly referred to the need for Queensland to introduce "safeguards to protect Indigenous students from inappropriate use of suspension and exclusion with mechanisms to monitor system compliance"**. Importantly, the necessary safeguards go beyond what is being proposed in the current QLD government's current (very light touch) proposal and **include the introduction of legislative thresholds, as well as involvement of an Indigenous advocate or support person to ensure (a) that children understand what is happening and what they are being accused of, and (b) that their perspectives about the incident are heard and considered in the decision-**



making process. We also detailed the reforms adopted to combat racial bias and overrepresentation in the use of exclusionary discipline in the United States, pointing to stand out public school districts like Chicago Public Schools (CPS) where they have successfully improved school safety and student achievement, while also significantly reducing the use of exclusionary school discipline. These reforms have included banning the use of suspension on young children (K-3), and for both minor and subjective reasons (e.g., ‘wilful defiance’), as well as reducing the maximum length of suspension to 3-days. Like many other US public-school systems, CPS achieved this by implementing **comprehensive Multi-Tiered Systems of Support (MTSS), which is a tiered approach to the delivery of supports to students across all three developmental domains: academic, behavioural, and social-emotional.**

Queensland has recently started using the language of MTSS but has, unfortunately, simply reheated **Positive Behaviour for Learning (PBL)**, which has had questionable impact in Queensland schools despite significant investment over the last decade and a half (Deloitte Access Economics, 2017). To combat this rebranding, **C4IE researchers are now using the term “Integrated Multi-Tiered Systems of Support” or I-MTSS** because, while PBL (or PBIS) is technically a tiered system of supports, it is not the new generation of MTSS that has been adopted in the United States over the last decade and a half, and nor is it the model recommended in the SA Inquiry (Graham et al., 2020), nor was it the model described in any of the research we have published about the use of exclusionary discipline in Queensland. PBL/PBIS can be implemented to support the behaviour domain in an I-MTSS, but it does not meet the comprehensive and holistic nature of I-MTSS. Note that I-MTSS is depicted not with a pyramid, like PBIS or Response to Intervention before it, but by an umbrella and/or a Venn diagram to signify focus on all three developmental domains (academic, social-emotional, and behavioural) with the “whole child” at the centre, and the integration of supports across those three domains. PBIS targets only one domain and is inadequate for the successful inclusion of students with disability, whom our most recent research has identified are most affected by suspension and exclusion in Queensland (Graham et al., 2023a).

In 2023, we again investigated disproportionality in the use of exclusionary school discipline, this time in partnership with Queensland Advocacy for Inclusion, using disaggregated data obtained through a Right to Information request. **This research showed first that children and young people in three priority equity groups (disability, Indigenous, in care) are significantly overrepresented compared to students not in any of those groups and that disproportionate overrepresentation increases with each layer of intersectional disadvantage** (Graham et al., 2023b). This analysis indicated that disability is a ‘common denominator’, with the risk of suspension highest for students where disability is a factor (e.g., Indigenous students with disability are at even more risk of suspension than Indigenous students in care without disability). In this paper, we pointed to gaps in and between the Queensland government’s strategies, noting that the “*Every Aboriginal and Torres Strait Islander Student Succeeding*” strategy does not include outcome measures for disability, which is a worrying oversight given the higher incidence of disability among First Nations peoples (Graham et al., 2023b). **We also noted the absence of a strategy for children living in out-of-home care, an absence that we note is noticeably replicated in the current proposal.**

Our published recommendations for legislative change (Graham et al., 2023b) are quoted in full below:

...this legislative change should also **include thresholds** like those proposed in the SA Inquiry to trigger escalated review of supports and adjustments once those thresholds are reached. **Stricter suspension criteria that reduce the number of permissible reasons for suspension including bans for minor incidents, as well as a significant reduction in permissible length (e.g. 3–5 days maximum) in line with international best practice** is also critical. **Specialist advocacy support and the right to appeal with that support** is another necessary safeguard to protect the rights of marginalised students, especially those in priority equity groups. To be effective, **legislative reform needs to be supported by tight accountability** in the enactment of policy and

procedure to make sure relevant safeguards are heeded throughout the system, including on the ground in schools. And **schools need to be supported with funding and guidance to implement evidence-based preventions and supports**, including in-school suspension to build social-emotional skills. For example, our research shows that the students with a disability receiving the most suspensions are those receiving adjustments in the Social-Emotional category. As found in the SA Inquiry, these students are also receiving more multiple suspensions than they are single, suggesting that the adjustments they have been recorded as receiving are inadequate, irrelevant or, quite possibly, not being enacted at all. These possibilities **underscore the importance of proactive universal social-emotional learning** that covers all five CASEL competencies, especially Responsible Decision Making which is not [adequately] covered in the Australian Curriculum Personal and Social Capability. Retrospective adjustments are unlikely to be successful when a student is already at the point of overwhelm and this is what we suspect might be the story behind these single/repeat suspension statistics. Inclusive education reform must also be supported with high-quality professional learning (PL) relevant to the groups that are most at risk of suspension: (i) inclusive practice, (ii) culturally appropriate practice and (iii) trauma-informed practice. PL should focus on Tier 1 (universal) provision for classroom teachers, extending to Tiers 2 and 3 (targeted and intensive) for specialist support staff. **Enhancements in inclusive, culturally appropriate, and trauma-informed practice need to be combined with the provision of evidence-based social-emotional learning, and all four delivered through a Multi-Tiered Systems of Support (MTSS) model which promotes the use of universal screening and progress measures to support data-based decision making.** Most importantly, teachers need to be upskilled to engage in accessible quality first teaching, for many of the students who end up in suspension statistics either have a known disability but are receiving inadequate support and adjustments contributing to an experience of overwhelm, as is often the case for neurodiverse students, or they have an unidentified disability and are receiving nothing but disciplinary consequences for a perceived failure to comply with instructions they not may understand, as in the case of those with a language disorder.

The protection of students

Sharing of information. We have concerns in relation to the sharing of information when a student transfers between Queensland schools. One School Behaviour Notes are already highly problematic in that **school staff can make highly prejudicial statements** that are not subject to review, and which already influence other staff's perception of children and their behaviour. A student and a parent or carer should also be permitted to access and review any information held and shared between Queensland schools, and to request corrections to information that is inaccurate or request that the student's perspective and voice is also captured in any information about the student. Transparency in information sharing and inclusion of the student and parents/ carers is critical to empower students and assist in promoting more positive and respectful relationship between school staff, students, and parents and carers. This would also be consistent with the guiding principles set out in section 7 of the *Education (General Provisions) Act 2006*, which requires that children and young people should be actively involved in decisions affecting them to the extent that is appropriate having regard to their age and ability to understand.

Amendments to contribute to the good order and management of Queensland state schools

Delegation of authority. We disagree with the proposal to allow principals to delegate authority to inform students of a suspension as our experience from the SA Inquiry suggests this will be a slippery slope to the delegation of suspension issuance. While the proposed amendments provide that the decision to suspend remains with the principal, there are limited mechanisms to ensure that these decisions are



not delegated to other school staff. The SA Inquiry found that while certain suspension and exclusion decisions required approval of Education Directors before being issued, staff interviewed were not aware of this requirement and could not recall any such approvals being requested or granted, indicating that insufficient mechanisms were in place to monitor and enforce this requirement (Graham et al., 2020). Given the significance of such decisions, and the impacts on student rights and interests, the responsibility for telling a student of a suspension and their rights in relation to the suspension decision should remain with the decision-maker: the school principal.

Appeal processes. We also disagree with the proposal to allow parents to appeal a short suspension *only* if it means a child will be suspended through cumulative short suspension for 11 or more days in a calendar year. Firstly, any duration of more than 3 days is not a short suspension by international standards and the 2014 legislative change that increased short suspensions from 1-5 to 1-10 days must be reversed. Parents should also have the right to appeal any suspension. The *Legislative Standards Act 1992 (Qld)* (LSA) establishes standards intended to ensure that Queensland legislation is of the highest standard and have sufficient regard to rights and liberties of individuals. Section 4 sets out fundamental legislative principles, which include the requirement that legislation makes rights and liberties dependent on administrative power only if the power is subject to appropriate review and is consistent with principles of natural justice (s. 4(3)(a)-(b)). **Allowing a student or parent/carer to appeal short suspensions *only* if it means the student will be suspended through cumulative short suspensions for 11 or more days in a calendar year fails to meet fundamental legislative principles under the LSA.** Preventing students and parents/carers from appealing other short suspensions fails to ensure that administrative powers of principals to suspend, which have significant consequences for the rights and interests of students, are subject to appropriate review consistent with principles of natural justice. Amendments to the *Education (General Provisions) Act 2006* must permit appeals of *all* short suspensions to ensure compliance with the LSA. This is also necessary to ensure children and young people are actively involved in decisions affecting them, as required under the guiding principles set out in section 7 of the *Education (General Provisions) Act 2006*, and Article 12 of the United Nations Convention on the Rights of the Child (CRC). To preserve students' fundamental rights to education, including the right to education under section 36 of the *Human Rights Act 2019*, students, parents and carers must be provided with the opportunity to challenge decisions or service delivery that fails to uphold the right to education.

Review periods. We disagree with the amendments permitting the chief executive up to 40 school days to deal with a submission against a suspension (proposed section 60G, *Education (General Provisions) Regulation 2017*). While we recognise that the *Education (General Provisions) Act 2006* provides that the chief executive must review a principal's decisions as soon as practicable, **allowing up to 40 school days fails to afford basic procedural fairness and erodes the value of review mechanisms. Lengthy review processes exacerbate harm caused by use of student disciplinary absences, and may increase student and parent/carer frustration, lead to communication breakdowns and damage partnerships between schools, students and parents/carers.** Best practice in fostering productive partnerships between schools, students and parents/carers includes access to transparent, timely, effective and enforceable appeal processes.

Student Support Plans. We support the introduction of a requirement for the chief executive to make a policy to provide for the making of student support plans (SSPs) for Aboriginal and Torres Strait Islander students, students with disability or preparatory age students who have been suspended or are at risk of exclusion. **However, this requirement must be extended to include students in care.** Furthermore, while the amendments require a principal to consider certain matters before suspending or excluding a student with disability and Aboriginal and Torres Strait Islander students, *there are no similar requirements listed for students in care.* Queensland Department of Education data on numbers of student disciplinary absences from 2016 to 2020 indicate that Indigenous students and students with disability are three times more likely to be suspended than the general population in state schools,



while students in care were six times more likely (Graham et al, 2023; Marszalek, 2022), and students who fell into more than one priority equity group were at significantly higher risk of suspension (Graham et al, 2023). These data represent the heightened risk of students in care and the impacts of intersectionality, and demand that further measures be taken to reduce the overrepresentation of students in care in student disciplinary absences. **As such, similar requirements should be introduced before suspending or excluding a student in care.**

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