

Education (General Provisions) and Other Legislation Amendment Bill 2024

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Education (General Provisions) and Other Legislation Amendment Bill 2024

Submission to the Education, Employment, Training
and Skills Committee

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Introduction

1. This is a submission to the Education, Employment, Training and Skills Committee in their consideration of the Education (General Provisions) and Other Legislation Amendment Bill 2024 (**the Bill**).
2. The Bill proposes a variety of amendments, including to the framework set out in the *Education (General Provisions) Act 2006* (**EGP Act**) regarding the good order and management of schools and school disciplinary absences (**SDA**).
3. The focus of this submission are amendments relating to SDAs.

Summary of submission

4. This submission makes recommendations both in relation to the amendment of the Bill and its implementation by the Department.
5. In relation to Bill amendments, the Commission's primary submissions are:
 - a. As a priority, clauses which prescribe matters for consideration when making an SDA decision must be inclusive and not exhaustive, or alternatively allow for the decision-maker to consider any other relevant matter. At present, the provisions could be interpreted as only allowing the consideration of prescribed matters, and excludes consideration of other factors that may be relevant to human rights compatibility. (clauses 77 (s 282), 84 (s 292), 87 (s 299) and 120 (regulations 60D, 60J and 60M) – see paragraph [58] of this submission).
 - b. The Bill should exclude preparatory students from suspension or exclusion decisions (clause 75 (s 279) – see paragraphs [48]-[51] of this submission).
 - c. References to the *Disability Discrimination Act 1992* (Cth) should be deleted, or refer to Queensland's *Anti-Discrimination Act 1991* (Qld) where appropriate. (for example clauses 76 (s 280), 94 (s 322((1)(d))), and 120 (regulations 60D, 60J and 60M) - see paragraphs [59(d)] and [68(c)] of this submission).
 - d. Recommends that the 18 month statutory review of the amendments amend its objects under proposed section 427A(2)(a) of the EGP Act to whether 'processes and decisions under the amended provisions are fair, transparent, ... consistent and compatible with human rights.' (clause 114 (s 427A) – see paragraphs [79]-[80] of this submission)

About the Commission

6. The Queensland Human Rights Commission (**the Commission**) is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (**Human**

Rights Act), including dealing with complaints of discrimination and contraventions of the Human Rights Act, and promoting an understanding, acceptance and public discussion of human rights in Queensland.

7. The Commission has contributed to various reviews relating to school education, promoting education as an important protective factor for child wellbeing and reducing involvement in the youth justice system, and supporting measures that would reduce the use of SDAs.¹

Relevant human rights considerations

Rates of SDAs

8. Queensland state schools' use of suspensions and exclusions from 2018 to 2022 is set out in Table 1. In 2022, there was 78,026 school disciplinary absences, a decrease of around 5,000 on the previous year made up mostly of short-term suspensions. There was a 36% decrease in the use of short-term suspensions for prep students.
9. In late 2022, the Queensland Government announced the implementation of their *Equity and Excellence Education Strategy* for realising the potential of every student, which prioritises maximising learning days and identifies SDAs as a measure of success. SDA data for 2023 is not yet available.
10. Research indicates children most at risk of school disciplinary absences are children with disability, Aboriginal and/or Torres Strait Islander children, and children in out of home care, or a combination of these attributes.² This mirrors the cohort of children disproportionately represented in the youth justice system.

¹ Eg, submission to the Department of Education's focused review of the *Education (General Provisions) Act 2006* (April 2022), submission to the Queensland Parliament Economics and Governance Committee on the Strengthening Community Safety Bill 2023 (February 2022); Submission to the Independent Reviewer on the *Queensland Non-State Schools Accreditation Framework review* (May 2023); submission to the Australian Human Rights Commission on their *Investigation into Youth Justice and Child Wellbeing Reform across Australia* (June 2023); submission to the Queensland Parliament Youth Justice Reform Select Committee on the *Inquiry into Youth Justice Reform* (November 2023); and submission to the Queensland Department of Premier and Cabinet on the *Putting Queensland Kids First: Consultation Draft* (February 2024).

² Linda Graham, Callula Killingly, Matilda Alexander and Sophie Wiggans, 'Suspensions in QLD state schools, 2016–2020: overrepresentation, intersectionality and disproportionate risk', *The Australian Educational Researcher* (available online, 24 August 2023) <<https://link.springer.com/article/10.1007/s13384-023-00652-6> />.

Table 1: School disciplinary absences by student demographics³

Year	Prep only			All years				TOTAL
	Short suspension*	Long suspension**	Exclusion	Short suspension*	Long suspension**	Exclusion	Cancellation	
2018	1,188	9	1	79,627	3,186	1,771	1,078	85,662
2019	1,522	9	1	77,167	3,132	1,674	971	82,944
2020 ^a	1,081	4		63,984	2,461	1,249	780	68,474
2021	1,074	3		77,600	3,092	1,516	887	83,095
2022 ^b	684	1		72,452	3,123	1,595	856	78,026

* 1- 10 days

** 11 – 20 days

a. 2020 data was impacted by the COVID-19 health emergency and increased home-based learning period in Term 2.

b. reduced counts in 2022 is partially due to reduced number of school days in Term 1 due to COVID-19 and extreme weather events.

Principles derived from human rights

11. Underpinning this submission are the following principles drawn from human rights.

Limiting access to education can have significant and long-term negative consequences on individual students and the community

12. The Human Rights Act protects the right of every child to have access to primary and secondary education appropriate to the child's needs.⁴ Education is an indispensable means of realising other human rights⁵ and is a significant protective factor against poor life outcomes.⁶

13. In its small sample review of 30 child deaths in Queensland, the Queensland Family and Child Commission found that

³ Drawn from the Department of Education, 'School Disciplinary Absences by student demographics', *Students* (Web Page, May 2023) <<https://qed.qld.gov.au/publications/reports/statistics/schooling/students>>.

⁴ *Human Rights Act 2019* (Qld) s 36.

⁵ United Nations Office of the High Commissioner for Human Rights, *CESCR General Comment No. 13: The Right to Education (Art. 13)*, UN Doc E/C.12/1999/10 (8 December 1999) [1].

⁶ See, eg, Megan O'Connell et al, *Quality Early Education for All* (Mitchell Report No 01/2016, April 2016) 6-7; Royal Australasian College of Physicians, *Early Childhood: The Importance of the Early Years* (Position Statement, May 2019) 37; Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018) 33-34.

for school aged children, failing to re-engage children in education exposes them to prolonged and increased risk. Put more simply — absence from schooling is a clear identifier that there are risks in a child's life.⁷

14. As the report explains:

School presents more than just an education opportunity but also a place where children may access specialised services to support their wellbeing, find structure and stability and engage with age-appropriate peers to maintain social capital and feel connected to their community. There remains a need for shared responsibility and coordination between agencies that respond to children disengaging from education including Education, Child Safety, Youth Justice, and Police. Keeping children engaged in school provides a down-stream approach and can prevent escalation to tertiary services and increasing human and financial costs.⁸

15. In his report into Youth Justice responses, Bob Atkinson noted that

the Pathways to Prevention project, operating over 10 years from 2002 to 2011 in a disadvantaged area of Queensland [identified] an absence of a positive attachment to school at age seven as the greatest predictor of later offending....

As well as education being key to the positive development of children, school provides an ideal environment to identify those who are at risk of antisocial or offending behaviour. As early as age five, children manifest behavioural signs indicative of a need for targeted support....⁹

16. Access to quality education is also part of the rights of the child protected by section 26(2) of the Human Rights Act.¹⁰ As demonstrated above, a failure to provide education can result in the limitation of other rights of the child or young person.

17. In order to assess compatibility of an action or decision with human rights, consideration must be given to the importance of preserving the human right.¹¹ In the context of SDAs, the potentially significant and long-term ramifications of limiting the right to education, both on the individual and the community, must be acknowledged and given sufficient weight.

⁷ Queensland Family and Child Commission ('QFCC'), *Lessons from the life-story timelines of 30 Queensland children who have died: A small sample review of commonalities in child and family trajectories considered at the Child Death Review Board* (Report, June 2023) 3.

⁸ Ibid 14. See also Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 34.

⁹ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 22, 34.

¹⁰ That is, 'Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child'. See also *United Nations Convention on the Rights of the Child* Art 28 and 29.

¹¹ *Human Rights Act 2019* (Qld) 13(2)(f).

Priority should be given to intervening early

18. The best outcomes that are least restrictive of human rights will be achieved by intervening before behaviours require the use of SDAs.
19. Intervening early includes treating health and mental health concerns, working with and supporting families, making reasonable accommodations for a child's disability, addressing racism in schools, and supporting connection to culture and community, particularly for First Nations children.
20. The Government has recently begun implementation of a Youth Engagement Education Reform package which includes the establishment of an intensive education case management service, recruitment of additional Court Liaison Officers and Youth Transition Officers, First Nations engagement programs and additional funding for Queensland Pathways State Colleges, FlexiSpaces in high needs schools, and alternative learning programs.¹²
21. The EGP Act should support these initiatives by ensuring:
 - a. SDAs are an option of last resort to respond to behaviour;
 - b. consideration of early intervention strategies before using SDA, and
 - c. legislated measures such as student support plans¹³, which are only written for children who have been suspended or are at risk of exclusion, are not prioritised at the expense of early intervention strategies.
22. The Commission strongly supports the Bill's inclusion of the guiding principle that

education should be provided in a way that ... recognises wellbeing as a foundation of education engagement and outcomes for children and young people.¹⁴

Families hold primary responsibility for children's health, wellbeing and development, and should be active participants in decision making

23. The Human Rights Act acknowledges that families are a fundamental group unit of society entitled to protection by society and the State, and protects the right of every child to the protection that is needed by the child, and is in the child's best interests, because of being a child.¹⁵ That families hold primary responsibility for

¹² Premier and Minister for the Olympic and Paralympic Games, Minister for Education, Minister for Industrial Relations and Minister for Racing, and Minister for Employment and Small Business, Minister for Training and Skills Development and Minister for Youth Justice, '\$288 million package to keep students engaged in education' (Joint Statement, 4 December 2023).

¹³ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 94 (inserts new Ch 12, pt 3, div 8A).

¹⁴ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 18 (amends s 7 (Guiding principles)).

¹⁵ *Human Rights Act 2019* (Qld) s 26.

the upbringing and development of the child is recognised under international law¹⁶ and in how the objects of the EGP Act are to be achieved.¹⁷

24. Families must have a role in measures concerning their child's behaviour at school and they should be supported to do so.

Children and young people have inherent dignity, and require special protection

25. Children and young people have the same inherent dignity and worth as all humans. They are also entitled to special safeguards and care, because of their 'particular vulnerability' by virtue of their physical and mental immaturity.¹⁸ Their needs and abilities will differ depending on their age and maturity, and are vastly different to that of an adult.
26. These characteristics of children and young people must be taken into account in any justification, and process, for SDAs.

Eliminating discrimination and promoting inclusion

27. Given the overrepresentation of children with disability and First Nations children subject to SDAs, consideration must be given to specific measures to address these cohorts and the role of discrimination.
28. Discrimination occurs when a person is treated less favourably because of an attribute that is protected, such as age, disability or race. However, discrimination can also occur where a person is disadvantaged because of their attribute, and may require differential treatment to achieve substantive equality.
29. Protection from discrimination is a right under section 15 of the Human Rights Act, and unlawful discrimination is prohibited in the education area under the Anti-Discrimination Act. Discrimination is also unlawful under the *Disability Discrimination Act 1992* (Cth) and the *Racial Discrimination Act 1975* (Cth). Additionally, section 28 of the Human Rights Act (cultural rights - Aboriginal peoples and Torres Strait Islander peoples) requires schools to act consistently with Aboriginal peoples' and Torres Strait Islander peoples' right to protect and develop identity and cultural heritage, to use language, to maintain kinship ties, to maintain and strengthen their relationship with the land, and to conserve and protect the environment.
30. Early intervention strategies such as reasonable accommodations for a child's disability, addressing racism in schools, and supporting First Nation students' connection to culture and community may be required to comply with these

¹⁶ *United Nations Convention on the Rights of the Child* Art 18.

¹⁷ *Education (General Provisions) Act 2006* (Qld) s 5(2)(a) provides: 'The objects [of the Act] are to be achieved mainly by - ... placing responsibilities on parents and the State in relation to the education of children and young people.'

¹⁸ *Human Rights Act 2019* (Qld) s 26 (2); Explanatory Notes, Human Rights Bill 2018 22; *United Nations Convention on the Rights of the Child* preamble.

obligations. These obligations will be strengthened if the Anti-Discrimination Bill 2024, currently under consideration, is passed (discussed further below).

31. The Commission strongly supports amendments made by clause 18 of the Bill to the guiding principles of the Act that education be provided in a way that –
 - (ii) promotes an *inclusive*, safe and supportive learning environment for children and young people;
 - (iii) recognises the educational needs of children and young people *of all abilities and from all backgrounds*.¹⁹

Other considerations

32. The Commission notes the following concurrent work that has informed this submission.

Putting Queensland Kids First

33. In January 2024 the Queensland Government published *Putting Queensland Kids First Consultation Draft (the Plan)*, which outlines
 - a vision that focuses on strengthening protective factors around children, young people and families to prevent adverse experiences through early interventions and prevention — starting early in life and targeting key transition points.
34. Education was identified as one of these protective factors, to ensure children and young people have ‘the best possible start in life, remain connected to education and achieve healthy outcomes with a focus on those at risk of entering the youth justice system’.²⁰
35. The Commission strongly supports the development of a whole of government strategy and recommended the Plan develop a clear vision co-designed with children, young people and their families. Critically, legislation, policy and practice by Government agencies should be consistent with the Plan, and not work against the Plan’s objectives by increasing risks and harms to children and young people. Many of principles outlined above are drawn from the Commission’s submission on the core principles that should guide the Plan’s approach.²¹

¹⁹ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 18 (amends s 7 (Guiding principles)).

²⁰ Queensland Government, *Putting Queensland Kids First: Giving our kids the opportunity of a lifetime* (Consultation draft, 2024) 10.

²¹ Queensland Human Rights Commission, *Putting Queensland Kids First: Consultation Draft, Submission to the Department of Premier and Cabinet* (Submission, 21 February 2024) <<https://www.qhrc.qld.gov.au/resources/submissions>>.

36. While a final Plan has not been released, consideration should be given to how this Bill may contribute to or frustrate the overarching goal of this plan to improve life outcomes for children and young people.

Anti-Discrimination Bill 2024

37. A draft Anti-Discrimination Bill 2024 has been published for consultation. The Bill is the implementation of the government's in principle support for the Commission's review of the Anti-Discrimination Act in 2022.²²
38. The proposed amendments to Queensland's anti-discrimination laws will have implications for schools and hopefully support intervention before an SDA is required. The draft Bill:
- a. Replaces the protected attribute 'impairment' with 'disability' and updates the definition of disability to align with the definition in the *Disability Discrimination Act 1992* (Cth) with some language updates. (schedule 1)
 - b. Introduces a general duty on duty holders to take reasonable and proportionate measures to eliminate discrimination as far as possible. The Commission must issue guidelines about how persons may comply with the general duty and may review compliance with the general duty. (clauses 19, 146 and 149)
 - c. Makes explicit an enforceable obligation to make reasonable accommodations for people with disability, unless the accommodation would impose unjustifiable hardship. (clauses 12, 14 and 15)
 - d. Expands the list of protected attributes to include: homelessness, irrelevant criminal record, subjection to domestic or family violence. (clause 10) This may have relevance to children in out of home care.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

39. The final report from the Disability Royal Commission made 222 recommendations on how to ensure a more inclusive and just society for people with disability.²³
40. Recommendations for states and territories relating to education are contained in Volume 7 and include:

²² Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022).

²³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability *Final report* (29 September 2023).

- a. Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability, including by:
 - i. avoiding exclusionary discipline of students with disability except as a last resort to avert the risk of serious harm to the student, other students or staff;
 - ii. considering the particular effects of exclusionary discipline for young children;
 - iii. including a duty for principles to report repeated use of exclusionary discipline involving a student with disability to an escalation point for independent case management;
 - iv. including a robust review or appeals process;
 - v. supporting students to re-engage with education post exclusion.
- b. Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability.
- c. Recommendation 7.6: Improve communication and relationships between schools, students and their families.
- d. Recommendation 7.8: Improve workforce capabilities, expertise and development in relation to inclusive education.
- e. Recommendation 7.9: Improve data collection, monitoring and reporting on the experience, outcomes and progress in addressing barriers for students with disability.
- f. Recommendation 7.10: Expand existing complaint management offices that operate within educational authorities at arm's length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability.

Submissions

- 41. Having regard to the above principles and other considerations, the Commission makes the following submissions on the Bill (in the order they appear in the Bill).

Education continues while excluded or refused enrolment – clause 54

- 42. Under clause 54, the Chief Executive of the Department of Education (**the Department**) is under an obligation to take reasonable steps to arrange for a prospective students access to an education program while pending a decision on enrolment. This obligation ends when a decision is made on the enrolment decision, including if enrolment is refused.

43. Under the existing provisions of the EGP Act, a principal (or the Department) who suspends a student must similarly take reasonable steps to allow the student to continue the student's education during suspension.²⁴ The obligation only extends to exclusion if the student is excluded from all schools by the Department.²⁵
44. There is potentially still a gap in the provision of education for students who have been refused enrolment and/or excluded from school, but are yet to secure alternative enrolment or schooling. The Commission submits the EGP Act ensure that students of compulsory school age have access to an educational program at all times.

Preparatory students excepted from suspension and exclusion decisions – clause 75

45. Given the significant detrimental impacts suspension and exclusion from school can have on long term life outcomes, the Commission recommends that preparatory students be excluded from the SDA regime.
46. The statistics for 2021 to 2022 outlined in Table 1 above demonstrate that the number of suspensions can be reduced dramatically for preparatory students, and exclusion can be eliminated altogether. Table 2 sets out the grounds for short-term suspension of preparatory students for 2022, in decreasing order of magnitude.

Table 2: Short term suspensions of preparatory students in 2022 by reason for suspension²⁶

Grounds for short term suspension	Total
Physical Misconduct involving Adults not involving an object	200
Physical Misconduct involving Students not involving an object	182
Physical Misconduct involving Adults involving an object	86
Physical Misconduct involving Students involving an object	54
Persistently disruptive behaviour adversely affecting others	52
Other conduct prejudicial to the good order and management of the school	33
Property Misconduct involving other's property	33
Other Serious conduct prejudicial to the good order and management of the school	14
Refusal to participate in the program of instruction	13
Verbal or Non Verbal Misconduct involving Adults	13

²⁴ *Education (General Provisions) Act 2006* (Qld) ss 284, 294, 301.

²⁵ *Education (General Provisions) Act 2006* (Qld) ss 304, 310.

²⁶ Drawn from the Department of Education 'School Disciplinary Absences by student demographics', *Students* (Web Page, May 2023) <<https://qed.qld.gov.au/publications/reports/statistics/schooling/students>>.

Verbal or Non Verbal Misconduct involving Students	3
Property Misconduct involving own property	1
Total	684

47. It is not known how many children were affected by the short-term suspensions (a child can be subject of multiple suspensions).
48. The Commission notes that the Bill, in providing for state school kindergarten programs, excludes kindergarten students from the operation of student discipline provisions (clause 74) and SDA provisions (clause 75). An enrolment application for a kindergarten student is also unable to be refused because of a reasonable belief that the child poses an unacceptable risk to the safety or wellbeing of members of the school community (clause 51).
49. The Commission submits that these exclusions extend to preparatory students, at least in relation to SDA provisions. This will prioritise early interventions over SDAs, and ensure compatibility with the human rights of preparatory students who, because of their age and stage of development, have limited capacity to understand and manage their behaviour, and are likely unable to comprehend the purpose or consequences of being suspended or excluded.
50. The Statement of Compatibility notes the difficulties for schools to understand all aspects of a preparatory student's needs, and to distinguish between behaviour that can/should be managed without issuing a suspension, when they are just getting to know the student and their families. This is given as the reason for having Student Support Plans for preparatory students.²⁷ Preparatory students can be as young as four and half years old. The Commission supports the preparation and implementation of plans to provide additional support to preparatory students and their families who need it, but maintains that preparatory students should be excepted from suspension and exclusion regimes.
51. Removal of the option of SDAs for preparatory students will need to be accompanied by sufficient resourcing of alternative measures to support positive behaviour, so that the school community is not exposed to unacceptable risk or unacceptable interference with the education of other students.

Expressly acknowledge that suspensions and exclusions are an option of last resort

52. The Department's current Student discipline procedure provides that school disciplinary absences, such as suspension or exclusion, should be applied 'as a

²⁷ Statement of Compatibility, Education (General Provisions) And Other Legislation Amendment Bill 2024 6-7.

strategy of last resort'.²⁸ The Commission recommends that this be an express guiding principle to SDA decision making under the EGP Act.

53. Whether an SDA decision is compatible with human rights includes consideration of whether there are any less restrictive and reasonably available ways to achieve the purpose.²⁹ Arguably, if there is a less restrictive and reasonably available way to achieve the purpose of the school disciplinary absence, then a decision to suspend or exclude the child is incompatible with human rights, which is unlawful under the Human Rights Act.³⁰
54. The proposed matters a principal or Department must consider before deciding to impose a SDA reinforce the notion that they are strategies of last resort. These include:
 - a. Other action the principal could take to adequately deal with the student's behaviour but still allow the student to attend the school; and
 - b. Any previous action taken by the principal or other staff of the school to deal with disobedience, misbehaviour or other negative behaviour of the student;
 - c. For a student with disability adjustments made or other action taken to support the student and whether further adjustments or action could be considered;
 - d. For an Aboriginal student or a Torres Strait Islander student, whether the cultural background of the student has been sufficiently recognized and supported in the school environment and whether further steps could be taken to better recognise and support the student's cultural background.³¹
55. The EGP Act should expressly reflect the generally accepted position that SDAs are a matter of last resort. This will facilitate compliance with the Human Rights Act and place priority on early intervention.

Grounds and matters to be considered when making suspension and exclusion decisions support a decision that is compatible with human rights – clauses 76, 77, 84, 87 and 120.

56. The EGP Act sets out the grounds upon which a student may be suspended or excluded³² (**the grounds**). These grounds are not amended by the Bill. The Bill additionally prescribes matters principals or the Department must take into

²⁸ Department of Education *Student Discipline procedure* (Web Page, Version 1.10, 28 February 2024) <<https://ppr.qed.qld.gov.au/pp/student-discipline-procedure>>.

²⁹ *Human Rights Act 2019* (Qld) s 13(2)(d).

³⁰ *Human Rights Act 2019* (Qld) s 58(1)(a).

³¹ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 120.

³² *Education (General Provisions) Act 2006* (Qld) ss 282, 292, 299.

account before suspending or excluding a student³³ (**prescribed matters**). The grounds and prescribed matters for suspensions and exclusions are substantially similar.

57. SDAs interfere with a students' right to education and the rights of the child. Depending on the circumstances, an SDA could also interfere with the student's right to recognition and equality before the law, and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples. SDAs therefore limit human rights and must be justified if they are to be compatible with human rights.³⁴ 'The burden on the public entity to justify limitations is high, requiring a degree of probability commensurate with the occasion, and must be strictly imposed in circumstances where the individual concerned is particularly vulnerable.'³⁵
58. The Commission's primary concern is that under the Bill, before making an SDA decision, the decision-maker 'must' consider the prescribed matters. Those matters are defined by regulation exhaustively, without any general discretion to consider further matters. This may prevent a decision-maker from considering matters relevant to assessing compatibility with human rights, leading to a conclusion that is not compatible with human rights. Potentially, the current drafting may oust the operation of the Human Rights Act altogether in relation to SDA decisions by virtue of section 58(2) of the Human Rights Act.³⁶ **The Bill must be amended so that decision-makers making SDA decisions can consider relevant matters that are not specifically prescribed, including matters relevant to human rights.**
59. Turning to the substance of the grounds and prescribed matters for SDAs, the Commission is of the view that these should, as far as possible, facilitate a decision that is compatible with human rights. Using the factors set out in section 13(2) of the Human Rights Act to assess proportionality, the Commission makes the following observations of the grounds and prescribed matters:
 - a. The nature of the human right – The significance of the right to education and the rights of the child have been identified above.

³³ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 77, 84, 87 and 120. Clause 120 amends the Education (General Provisions) Regulation 2017, and inserts regulations 60D, 60J and 60M.

³⁴ *Johnston v Commissioner of Police* [2024] QSC 2 [269].

³⁵ *Johnston v Commissioner of Police* [2024] QSC 2 [73] citing *Certain Children v Minister for Families and Children (No 2)* [2017] VSC 251; 52 VR 441 [203].

³⁶ Section 58(2) of the Human Rights Act provides that the obligations on public entities under section 58(1) do not apply if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.

b. The purpose of the limitation – The purpose of the SDA needs to be sufficient to outweigh the significant, and potentially catastrophic, outcomes for a child the subject of an SDA. Such purposes might include unacceptable risks to safety and wellbeing of the student or school community, unacceptable interference with other students' education, serious property damage, or illegal activity creating risk for the school community. The EGP Act, however, allows for SDAs on the grounds of disobedience, misbehaviour, 'conduct that adversely affects...other students' and 'conduct that adversely affects...the good order and management of the school'.³⁷ These grounds could easily lead to SDA decisions that cannot be justified by their purported purpose, especially in relation to young students, exclusion decisions, and students for whom a SDA would have a serious detrimental impact – for example, where there is a lack of family support for the student. **The Commission submits that the grounds should be reviewed and refined to support the making of SDAs only for purposes capable of justifying the restrictions to the student's human rights.**

As an example, in Victoria, a principal may suspend a student if the student:

- (a) behaves in such a way as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person;
- (b) causes significant damage to or destruction of property;
- (c) commits or attempts to commit or is knowingly involved in the theft of property;
- (d) possesses, uses or sells or deliberately assists another person to possess, use or sell illicit substances or weapons;
- (e) fails to comply with any clear and reasonable instruction of a staff member so as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person;
- (f) consistently engages in behaviour that vilifies, defames, degrades or humiliates another person based on age; breastfeeding; gender identity; disability; impairment; industrial activity; lawful sexual activity; marital status; parental status or status as a carer; physical features; political belief or activity; pregnancy; race; religious belief or activity; sex; sexual orientation; personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes; or
- (g) consistently behaves in an unproductive manner that interferes with the wellbeing, safety or educational opportunities of any other student.³⁸

³⁷ Eg, *Education (General Provisions) Act 2006* (Qld) ss 282(1)(a)-(d).

³⁸ Minister for Education (Vic), *Ministerial Order No. 1125 – Procedures for Suspension and Expulsion of Students in Government Schools* (9 May 2018 incorporating amendments as at 3 February 2022).

The Commission acknowledges that some of the prescribed matters will help to ensure that the purpose of the SDA will have sufficient gravity, for example, the seriousness and frequency of the behaviour in question, the safety and wellbeing of the school community, and the student's previous behaviour.

- c. The relationship between the limitation and its purpose – Some prescribed matters implicitly consider the relationship between the SDA and its purpose, for example, any previous action taken by the principal to deal with behaviour, previous suspensions and exclusions, and the student's response to any of these actions. **The Commission submits that prescribed matters should expressly require consideration of whether the SDA is likely to achieve its stated purpose.** In the case of suspension, this would require consideration of the student's and family's attitude towards the suspension.

The Commission also queries what the 'student's response' to previous action in the prescribed matters means³⁹ – whether this means the student's views of previous action taken, or the efficacy of those actions in changing the student's behaviour. This should be clarified.

- d. Whether there are any less restrictive and reasonably available ways to achieve the purpose – The prescribed matters expressly require consideration of other actions the principal could take to deal with the student's suspension behaviour. The prescribed matters also require decision-makers to consider sufficiency of current supports, adjustments for a child with disability, and cultural supports for Aboriginal students and Torres Strait Islander students. The Commission strongly supports these prescribed matters.

For suspensions, decision-makers should further consider the length of the proposed suspension, to ensure it is for the shortest possible period.

In relation to adjustments for students with disability, the Bill specifically references the *Disability Discrimination Act 1992 (Cth)* and the *Disability Standards for Education 2005 (Cth)*. **The Commission submits that this is unnecessarily limiting and could lead to schools overlooking additional obligations under Queensland laws such as the Anti-Discrimination Act and the Human Rights Act.**

Additionally, clause 76 inserts into section 280 of the EGP Act a definition for 'disability' by reference to the *Disability Discrimination Act 1992 (Cth)*. The Commission acknowledges that the definition of 'impairment' under the Anti-Discrimination Act is currently under review, but section 280 should be

³⁹ See Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 120 (inserted regulations 60D(2)(g), 60J(2)(g) and 60M(2)(g)).

updated if and when new Queensland anti-discrimination laws are passed that define 'disability'.

- e. The importance of the purpose of the limitation – The purpose of SDAs can be extremely important, such as welfare, health and safety, and the right to education of other students.
 - f. The importance of preserving the human right, taking into account the nature and extent of the limitation on the human right – The proposed prescribed matters do not sufficiently take into account the nature and extent of the limitation of the human right. **That is, the prescribed matters should consider the impact of the proposed SDA on the child, having regard to the child's age, family supports and environment, the length of SDA, and educational programs and other interventions that will be implemented while the child is subject to an SDA.**
 - g. The balance between purpose of the limitation and preserving the human right – This balance is part of the decision-maker's assessment in having regard to all the prescribed matters.
60. In summary, the Commission submits that the grounds and prescribed matters underpinning SDA decision making should assist decision-makers to comply with their obligations under the Human Rights Act to act compatibly with human rights and to give proper consideration to human rights. To this end, the Commission recommends:
- a. The prescribed matters allow decision-makers to consider other relevant matters (including matters relevant to human rights) that are not specifically prescribed.
 - b. The grounds for SDAs are reviewed and refined to better support the making of SDAs only for purposes capable of justifying the restrictions to the student's human rights.
 - c. Prescribed matters should expressly require consideration of whether the SDA is likely to achieve its stated purpose. For suspensions, this includes considering the attitudes of the student and their family towards the suspension.
 - d. Clarifying the meaning of 'the student's response' to previous suspensions, exclusions or other action, as referred to in the prescribed matters.
 - e. For suspensions, decision-makers should consider the length of the proposed suspension, to ensure it is for the shortest possible period.
 - f. Notes which refer to the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Education 2005* (Cth) are unnecessarily limiting and should be deleted. Additionally, definitions of 'disability' should, in due course, refer to Queensland anti-discrimination legislation.

- g. Prescribed matters should consider the impact of the proposed SDA on the child, having regard to the child's age, family supports and environment, the length of SDA, and educational programs and other interventions that will be implemented while the child is subject to an SDA.
61. If not by amendment to the legislation and regulation, these observations should be incorporated into Department's policy for SDAs.

Content of Department's policy for SDAs – clause 96

62. Clause 96 of the Bill inserts new section 332A into the EGP Act requiring the Department to make a policy and procedure about SDAs and cancellations which must be publicly available. This will be a vital tool to ensuring consistent, transparent, accountable, and human rights compatible decision making for SDA decisions and cancellations.
63. Many of the issues raised in this submission should be embedded in the policy, in particular, considerations relevant to making an SDA decision. In addition, the policy should:
- a. Provide guidance on how to identify children at risk and when to intervene;
 - b. Set out innovative alternatives to SDAs and resources available to schools;
 - c. Provide practical examples that assists principals to make a human rights compatible decisions, which include not only whether an SDA should be made, but the terms of the SDA, such as length of time and other supports or strategies that should be put in place to address the behaviour in question and support the child's reintegration into school;
 - d. Support principals and schools to meaningfully engage with the student and their families at an early stage before an SDA is required;
 - e. Highlight the legislative obligation to continue a student's access to educational programs while subject to an SDA⁴⁰ and what resources are available for the school to do this;
 - f. Provide guidelines to support compliance with Queensland anti-discrimination law, including how to provide reasonable adjustments for students with disability, and how to provide cultural support for Aboriginal students and Torres Strait Islander students.
 - g. Set out the content and function of education support plans for children in out of home care (see below).

⁴⁰ *Education (General Provisions) Act 2006* (Qld) ss 284, 294, 301, 304, 310 and *Education (General Provisions) And Other Legislation Amendment Bill 2024* cl 54 (inserts s 163A).

Student support plans and education support plans – clauses 94 and 120

64. Student support plans (**SSPs**) envisaged by clause 94 of the Bill are plans written by the principal for a student designed to reduce the likelihood of further suspension or exclusion of the student. They are for students who:
 - a. have been suspended or at risk of exclusion, and
 - b. who are either an Aboriginal student or Torres Strait Islander student, a preparatory student, or a student with disability.
65. The clause does not implement the plans, but requires the Department make a policy setting out when an SSP must be made, what it must contain and how it is to be developed.
66. SSPs will 'allow focused strategies and support for these students and involve parents / guardians to help identify any needs or complexities contributing to the behaviour that may not otherwise be known by the school or appropriately supported'.⁴¹
67. It is imperative that SSPs complement, and are not at the expense of, early intervention strategies.
68. The Commission also submits that the Department's policy regarding SSPs consider inclusion of the following matters:
 - a. Proposed section 322 requires that the policy provide for the involvement of the student and parent in making the SSP. In many cases, an effective SSP may also require input from teaching staff, health and allied health experts, and other supports the student receives outside of school.
 - b. Who the SSP should be given and explained to, including the student, the family, and any other relevant person, with the goal of having a coordinated and consistent approach to supporting the student, subject to privacy considerations of the student and family.
 - c. Actions and time frames which then form the basis for the principal's and/or the Department's review of the SSP and evaluation of its efficacy. Currently, proposed section 322(1)(d) only requires the policy provide for action that must be taken to ensure compliance with the *Disability Standards for Education 2005* (Cth). Reference to the standards should be deleted as it is unnecessarily limiting and risks overlooking other legislative obligations, including Queensland's Anti-Discrimination Act.

⁴¹ Explanatory note, Education (General Provisions) and Other Legislation Amendment Bill 2024 4.

- d. A prescribed matter for an SDA decision is whether an SSP sufficiently supports the student or could be changed to better support the student.⁴² The SSP policy will need to provide guidance on this process, as well as set out expectations arising from SSPs and what options are available to the student where an SSP is not followed or requires amendment.
- e. Thresholds at which point a student and SSP are referred to the Department for review and, if necessary, case management. (See discussion on review rights below).
69. The Bill also introduces the idea of 'education support plans', which must also be considered when making an SDA. An education support plan is a plan written by the principal or their delegate designed for children in out of home care that addresses the child's education needs and goals.⁴³ The Commission is generally supportive of an initiative to target the challenges faced by children in out of home care, who are overrepresented in SDAs⁴⁴. However, apart from the definition of education support plans, there are no further details provided about their content or function. Published guidance is necessary to ensure education support plans fulfil their purpose and are used by schools.
70. Both initiatives require adequate resourcing if they are to achieve their purpose of improving supports and reducing SDAs for students with disability, preparatory students, Aboriginal students, Torres Strait Islander students, and students in out of home care.

Review rights – clauses 78, 79, 86, 89, 90, 106, 107

71. The Commission's understanding of decision making and review processes in relation to SDAs under the EGP Act, as amended by the Bill, is set out in Table 3.

⁴² Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 120 (proposed regs 60D(3), 60J(3) and 60M(3)).

⁴³ Education (General Provisions) And Other Legislation Amendment Bill 2024 cl 120 (proposed reg 60C)

⁴⁴ Linda Graham, Callula Killingly and Sophie Wiggans, 'Intersectionality and disproportionate risk', *Use of Suspensions in QLD State Schools* (Web Page, 17 March 2023) <<https://research.qut.edu.au/c4ie/events/overuse-of-suspensions-in-qld-state-schools-a-long-way-from-equity-and-excellence/>>.

Table 3 – Timeframes (and notice of decision requirements) for decision making and review in relation to SDAs under the EGP Act as amended by the Bill

	Short term suspension (= <10 days)	Long term suspension (>10 days including cumulative short term suspensions)	Exclusion	Refuse enrolment of prospective student	Exclude prospective student
Due date for decision	NA (approved form) s 283 amd by cl 78	NA (approved form, right to make subs) s 283 amd by cl 78	Within 20 school days of notice of proposed exclusion s 295 amended by cl 86 (principal's decision) (30 school days if Department's decision, s 302 amd by cl 89) (approved form, right to make subs)	No due date following show cause process. (information notice with reasons) s 162	No due date following show cause process. (notice with reasons, right to make subs) s 309 amd by cl 90
Internal review submissions	No review rights	Within 20 school days s 285 amd by cl 79	Within 30 school days s 312	Within 30 school days S 391 amd by cl 106	Within 30 school days s 312
Decision on internal review by Department	No review rights	Within 40 school days s 286 amd by cl 79 (approved form)	Within 40 school days (notice with reasons) s 313	Within 40 school days s 392 amd by cl 107 (notice with reasons)	Within 40 school days (notice with reasons) s 313
QCAT review available	No	No	Only decisions to exclude from all state schools s 401	Yes s 393	Only decisions to exclude from all state schools s 401

72. The Commission notes the following gaps in review rights:

- a. A student who receives a notice of proposed exclusion does not have access to a legislated show cause process. In contrast, a prospective student facing refusal of enrolment or exclusion is entitled to show cause before a final decision is made.
- b. A student who receives a notice of proposed exclusion is suspended until a decision is made within 20 school days (or 30 school days if made by the Department). There are no review rights for this suspension, even if the student is ultimately not excluded.

- c. There are no timeframes for the Department to make an enrolment decision following the show cause process.
73. If not through legislative amendment, these issues should be addressed in the Department's policy on SDAs.
74. Students are notified of suspension and exclusion decisions using an 'approved form'. For procedural fairness, the approved form must set out the reasons for the suspension or exclusion, including the grounds and the prescribed matters considered to make the decision, upon which submissions for internal review can be made.
75. The Commission notes the lengthy time frames for review processes. The Commission recommends reviewing these timeframes at the statutory review of the amendments in 18 months time, having regard to collected and published data about the utilisation and outcomes of review processes, and student and school experiences.

Monitoring and auditing by the Department

76. Apart from relying on students and their families to elevate their concerns regarding SDAs, there should be mechanisms that elevate appropriate cases automatically for review, and if necessary, case management. This could be tied in with policy regarding SSPs, requiring principals to refer students and their SSPs to the Department for review once certain thresh holds have been met.
77. The Commission commends the publicly available data on Queensland SDAs, broken down by SDA type, year level, semester, region, region, reason, and First Nations status.
78. To assist with transparency and accountability of SDA decisions, and system improvements, the Commission further recommends publication of data that shows:
 - a. Disability status, and if possible, type of disability;
 - b. Students in out of home care;
 - c. Students subject to multiple SDAs;
 - d. Students who have SSPs or Education Support Plans;
 - e. Reviews of SDA decisions requested, timeframes for response and outcomes.

Review of amendments – clause 114

79. Clause 114 of the Bill inserts new section 427A to require statutory review of the amendments made in relation to cancellation of enrolment, exclusion, refusal to enroll and suspension, to start within 18 months after commencement of the provisions.

80. The stated object of the review is to determine whether the amendments have been effective in ensuring 'processes and decisions under the amended provisions are fair, transparent and consistent'. The Commission submits this should also include reference to whether the processes and decisions are compatible with human rights and give proper consideration to human rights, in accordance with public entity obligations under section 58(1) of the Human Rights Act.