

# Review of the *Education (General Provisions) Act 2006*

Submission

May 2022

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### **Acknowledgement**

The Queensland Family and Child Commission (QFCC) acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies on which we walk, live and work upon.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to their Elders past, present and emerging.

### **Queensland Family and Child Commission**

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## Introduction

The Queensland Family and Child Commission (QFCC) is a statutory body of the Queensland Government seeking to give practical effect to the rights of all children and young people in Queensland through awareness, advocacy and accountability.

Under the *Family and Child Commission Act 2014*, the QFCC is responsible for promoting the safety, wellbeing and best interests of children and young people. This includes representing their best interests in decision-making processes.<sup>1</sup>

The QFCC is pleased to have the opportunity to provide feedback to the Queensland Department of Education (DoE) review of the *Education (General Provisions) Act 2006* (EGPA) to ensure it remains contemporary and fit for purpose.

Education is a right for all children under article 28 of the United Nations' *Convention on the Rights of the Child* (UNCRC),<sup>2</sup> to which Australia is a signatory, and section 36 of the *Human Rights Act 2019* (Qld). In addition, children and young people have consistently told the QFCC that finishing school, and getting an education, is a high priority for them.<sup>3</sup>

The QFCC advocates for the voices of children to be heard and their views be considered in matters affecting them. We support the DoE engagement with our Youth Advisory Council in its review of the EGPA. We have also been able to consult the Youth Advisory Council and included the views of one of our Youth Advocates in this submission.

This submission will focus on areas linked to key priorities of the QFCC.

## Overarching Principle

It is the QFCC's position the DoE should be accountable and responsible for all children's education, whether that is in the private or public sector, detention settings, hospitals, over the air waves, whether children are engaged or disengaged and children participating via alternative delivery models.

Education must be a system for all children. The system must be responsive to the needs of children with disadvantaged backgrounds. The QFCC is concerned that there are too many gaps. We see these gaps in the QFCC's Child Death Review Board reports, youth justice surveys and what we know about children in out of home care.

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<sup>1</sup> *Family and Child Commission Act 2014* (Qld), s.4.

<sup>2</sup> United Nations' *Convention on the Rights of the Child*, Art 28.

<sup>3</sup> Queensland Family and Child Commission 2021, *Voices of hope: Growing up in Queensland 2020*, <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/listening-children-young-people/growing-queensland>, accessed 29 April 2022, p. 29.

## School disciplinary absences and enrolment decisions

The use of school disciplinary absences (SDAs) is an issue of great concern to the QFCC. Over use of SDAs may impact the rights of children and young people to education, and have a profound effect on their ongoing wellbeing.

Children experiencing disadvantage are more likely to receive SDAs than other children. This disadvantage can include disability, trauma, poor mental health, domestic and family violence, and unstable housing. In 2015, children in out-of-home care were four times as likely as other children to receive SDAs.<sup>4</sup>

In 2021, students with disability made up 46 per cent of all students receiving an SDA.<sup>5</sup> Aboriginal students and Torres Strait Islander students made up 25.2 per cent of this cohort,<sup>6</sup> despite comprising approximately ten per cent of full time enrolments in Queensland Government schools.<sup>7</sup>

Disengagement from education is a known risk factor for contact with the youth justice system. In 2021, the QFCC's *Changing the sentence: Overseeing Queensland's youth justice reforms* report found around 53 per cent of children in the statutory youth justice system are disengaged from education, training or employment.<sup>8</sup>

Children interviewed for *Changing the sentence* told us they wanted to be at school, or receiving education, but were pushed out of school for their behaviour without being provided with alternatives.

When a child is suspended from school, not only is their access to education limited, they also lose access to the social and health supports schools offer. Directly and indirectly, schools provide for the welfare of children; school staff are uniquely placed to identify children who may need to be referred for further support. Children who are suspended from school lose what might otherwise be their only accessible support network.

For these reasons, SDAs should be administered only as a last resort. Where students are suspended from schools, pathways must be provided to make sure children have the opportunity to continue their education and remain connected to school staff who can refer them to broader support services when required.

As well as this, appropriate training for teachers to be able to recognise vulnerabilities and harmful behaviours - in both children and caregivers - needs to be prioritised to ensure children and young people have the best opportunity to be safe, remain in education and develop to their full potential.

### **Access to education while enrolment decision is pending**

As the consultation paper suggests, the current process to refuse enrolment or exclude a student from a state school is inconsistent with s.36 of the *Human Rights Act 2019* (Qld) as there are no decision timelines in place, and no legislated requirement for a prospective student to have access to education while the decision about enrolment is pending. For these same reasons, the process is also inconsistent with Queensland's obligations under article 28 of the UNCR.

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<sup>4</sup> Department of Education 2016, *Practice resource: School disciplinary absence*, <https://www.cyjma.qld.gov.au/resources/childsafety/practice-manual/practice-resource-sda.pdf>, accessed 29 April 2022.

<sup>5</sup> Queensland Parliament, Answer to Question on Notice No. 282, asked 29 March 2022.

<sup>6</sup> Queensland Parliament, Answer to Question on Notice No. 282, asked 29 March 2022.

<sup>7</sup> Report on Government Services 2022, Part b, Section 4: School Education, School Education Data Tables, Table 4A.5 accessed 05 May 2022

<sup>8</sup> Queensland Family and Child Commission 2021, *Changing the sentence: overseeing Queensland's youth justice reforms*, <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/monitoring-reviewing-systems-protect-children/changing-sentence>, accessed 29 April 2022.



The consultation paper suggests the EGPA may be amended to include an expectation that, if a prospective student's enrolment is referred to the chief executive for consideration of a refusal to enrol, access to education must be provided in the interim. The QFCC suggests a more holistic amendment, which would require the DoE to provide access to education for all children, including those who are suspended from school, as well as those whose enrolment in any particular school may be or has been refused or is under review.

It is also important students in these situations have access to the necessary home learning materials (including the internet and learning device) for the entirety of the period from which they are absent from school and that the decision-maker is informed and aware of the young person's home environment and confident that is appropriate for learning.

As noted in the consultation paper, this would incur additional costs to the state. However, if successful, this amendment could reduce the social and economic costs of disengagement from education, including the cost of contact with the youth justice system.

### **Short term Suspensions**

In 2021, 77,598 short term suspensions were issued which represents 93.3 per cent of all SDA decisions. 19,403 of those short-term suspensions related to First Nations students. This equates to a disproportionate 25 per cent of all short-term suspensions across Queensland.<sup>9</sup>

The QFCC supports the introduction of a new appeal right for short term suspensions. An appeal process that enables robust examination of short-term suspension decisions will reduce overreliance on these measures. The new appeal right should place the onus on the decision-maker to justify their decision including having to demonstrate they considered every reasonable alternative in the circumstances and that the short-term suspension is a decision of last resort.

In addition, the DoE should consider whether to reduce the number of days a principal can approve suspension, in line with current practice in Victoria, Tasmania and South Australia. Consideration may also be given to the provision in place in the ACT, whereby a student suspended for more than seven days in one school term be given the requirement to attend an appropriate course of counselling, in such a way as can be monitored by the school while still allowing student autonomy and privacy.

### **Provision of Information**


In general, the QFCC supports information being given to students and their families and carers about suspension and enrolment decisions in writing as quickly as possible. The QFCC would also support the removal of provisions that allow refusal of enrolment to occur automatically where there is no response to a show cause notice, and instead require the chief executive to make an active decision about enrolment based on the information available, in line with the principle of procedural fairness.

## **Defining 'instruction', 'administration' and 'facilities'**

The QFCC supports the inclusion of definitions of these terms in either the EGPA or departmental regulation or policy. To enable the DoE to remain agile and to meet changing community views, it may be advantageous to have the definitions reside in regulation or policy as opposed to the EGPA.

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<sup>9</sup> Queensland Parliament, Answer to Question on Notice No. 282, asked 29 March 2022.



Whether defined in EGPA, or departmental regulation or policy, including detailed information and examples will provide more certainty in interpretation for schools as well as assurance of consistency and fairness in application and outcomes across schools, and regions for families.

It is important that in defining the above terms no unintended consequences for families or students occur and there must be sufficient flexibility available for decision-makers when dealing with novel circumstances.

Definitions should not enable schools to place an unreasonable onus on families to pay for typical education related expenses, or impact student participation in school related activities due to unexpected out-of-pocket costs to their family.

## Enrolment management plans

Despite the administrative challenge, the QFCC supports maintaining the requirement for schools to publicly state the enrolment capacity for students whose principal place of residence is outside the school's catchment area. This requirement is already in the EGPA (section 169(b)) and enrolment management plan practice should be updated to align with what is required under the legislation. Should the DoE proceed to amend this legislation, any amendment should not prevent schools from prioritising vulnerable cohorts of children, for example, children living in out of home care.

Making out-of-catchment capacity information available to families provides certainty for parents and carers planning enrolment to their family's school of choice. In schools where this figure fluctuates significantly from year to year, a five-year average or percentage estimate for out of catchment intake may be sufficient.

## Home education

Given the significant increase in the number of children and young people accessing education through home schooling, improvements to the provisions in the EGPA are supported by the QFCC. These technical amendments to home schooling should streamline processes and reduce the time periods that children and young people are not accessing education. However, care should be taken to not compromise the quality of the education experience being offered to children and young people nor the educational outcomes being achieved.

Clarifying the meaning of high-quality education will provide assurance that children and young people have equitable access to educational programs regardless of the setting. The QFCC would seek to have sufficient safeguards in place to ensure children and young people who have their registration cancelled are being followed up and supported so their right to education continues to be upheld.


## Mandatory reporting obligations

The QFCC supports alignment of mandatory reporting frameworks to reduce confusion and potential duplication. Each of the mandatory reporting frameworks were passed into law at different times and each bear their own distinct policy reasons. The difficulties in seeking alignment are well canvassed in the discussion paper and it may be the view a larger piece of work is required to fully consider all of the issues. The QFCC would be happy to support this work should it proceed.

## Nomenclature and technical amendments

### Nomenclature amendments

The QFCC supports nomenclature amendments to the EGPA that better reflect modern Queensland and the diversity of our children and young people. Use of gender-neutral language, more formal recognition of Aboriginal



and Torres Strait Islander peoples, inclusion of the concept of ‘wellbeing’ to reflect the broader role of schools, and recognition of the diversity of students will go some way to improving the inclusiveness of education in Queensland.

The way ‘wellbeing’ is defined the EGPA will have a significant impact on how schools interpret their responsibilities to students and approach the delivery of services. Care must be taken in this regard.

### **Clarifying physical attendance requirements**

The QFCC encourages progressive ways of engaging students that support them to learn and be well.

The QFCC recognises that, since the beginning of the COVID-19 pandemic, schools and teachers in Queensland have been integrating traditional learning methods with online learning to meet the changing needs and expectations of students, by leveraging technology.

In 2019, before the pandemic started, more than 3,400 students in Queensland were home educated,<sup>10</sup> and more than 8,800 were enrolled in distance education.<sup>11</sup> This represents approximately 1.5 per cent of school registrations for that year,<sup>12</sup> and indicates a considerable number of students were engaging in alternate education.

Some families choose home or distance education to reduce the risk of children disengaging from learning in a traditional school setting. Home and distance education are often perceived to benefit students who do not form a connection with school, peers or teachers, students with chronic illness, disability or mental health issues or students who live in or move between remote areas.<sup>13</sup>

The long-term educational experience of these students could be improved by providing options to learn from home at times, where appropriate, while continuing to be formally enrolled in a school. A flexible, home-based learning model can enable students to maintain their sense of inclusion and connection to their school, peer relationships, and have uninterrupted learning by classroom teachers.

The QFCC supports amendments to the EGPA that acknowledge the advances in technology and contemporary teaching practices in schools through an online environment. The QFCC is however mindful of the additional workload inherently associated with teaching and supporting students who are learning from home. It is important any amendments in this regard do not place an unreasonable additional burden on teaching staff.

More examination should be done to understand the benefits of making flexible home-based learning options available as well as the teaching support required to deliver more progressive, inclusive and engaging education.

### **Clarifying a non-state school principal’s protection when providing information**

The QFCC support amendments clarifying a non-state school principal’s protection when providing certain information under sections 180 and 251AB of the EGPA. This is in the best interest of students transferring between the non-state and state education system by enabling continuation of education.

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<sup>10</sup> The State of Queensland (Department of Education) 2019, *Home Education Registrations* accessed 27 April 2022 <https://qed.qld.gov.au/det-publications/reports/earlyyears/Documents/home-education-registrations.XLSX>

<sup>11</sup> AADES, *Queensland* [webpage] <https://www.aades.edu.au/qld>

<sup>12</sup> Australian Bureau of Statistics (ABS) 2020, *4221.0 - Schools, Australia, 2019 Table 35b Counts of all schools, 2010-2019* accessed 27 April 2022 <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4221.02019?OpenDocument>

<sup>13</sup> Government of Western Australia (Commissioner for Children and Young People) 2015, *Children and young people at risk of disengagement from school* accessed 27 April 2022 <https://www.cryp.wa.gov.au/media/1422/report-education-children-at-risk-of-disengaging-from-school-literature-review.pdf>



## Protecting school communities from online abuse

The QFCC supports amendments that protect school staff from online abuse. The QFCC is concerned, however, that the suggested amendments do not include protecting children and young people, and other school community members, including parents, carers and volunteers, from inappropriate online behaviour or harassment. The suggested legislation provisions should be amended to protect all people involved in a school community, including children and young people, from online abuse in different circumstances.

## Sharing of child safety information

The QFCC recognises the benefit of information sharing to ensuring the safety and welfare of transferring students as well as students and staff at the student's new school. Sharing certain information is useful to understanding the circumstances around a student's move to a new school. This can help provide added context to potential barriers to learning and ensure support is as accessible as possible as early as possible.

The QFCC supports any amendments to the EGPA that require and enable more proactive information sharing including improving clarity over the appropriateness of information sharing circumstances and guidance on what is considered proportionate information sharing.

## State special schools and special education

The QFCC supports removing the need to refer an enrolment application to the chief executive or their delegate for students transferring from one Queensland state special school to another. Streamlining the enrolment requirements for transfer of students between Queensland state special schools ultimately supports continuity of education for these students.

The QFCC does not support the Minister retaining responsibility for determining whether a prospective student 'is a person with a disability'. Ministerial decision making in this context should be entirely reliant on departmental advice and expertise in any event. This responsibility should be permanently reassigned to the chief executive with decision delegating powers. The QFCC supports determinations informed by an appropriately qualified child and youth disability professional with firm understanding of the spectrum of disabilities that may affect students' education experience.

At all points in time, this process, must maintain respect and consideration for students with disability and their families.


## Parents and Citizens Associations

The QFCC has no submissions in relation to this topic, other than to emphasise that parents and carers comprise of a core part of the education of their children. Schools that engage families and communities are more likely to be successful .

## Feedback on consultation process

The QFCC notes the comments in the Courier-Mail of 7 May 2022 of the Honourable Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, concerning an intended meeting with the QFCC's Principal Commissioner and would be pleased to work with the DoE upon its completion of its deep-dive exercise in June 2022.





The QFCC thanks the DoE for the opportunity to make submissions on this review. The QFCC would be pleased to continue to engage with the DoE on the above matters as the DoE continues its review including during cabinet and drafting processes, in particular, on school disciplinary absences and enrolment decisions. In particular there is greater opportunity for the DoE to confirm its commitment to:

- Children in child protection system, including their enrolment, attendance and performance;
- Children in the youth justice system, including their engagement in learning; and
- Children from vulnerable families that require alternative education processes.