

Education (General Provisions) and Other Legislation Amendment Bill 2024

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Inquiry Submission

Education (General Provisions) and Other Legislation Amendment Bill 2024

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Queensland Family and Child Commission

Contents

Acknowledgement of Country.....	3
Background.....	4
Human Rights Legislation	5
Student Disciplinary Absences (SDA).....	7
Appeals	8
Home Education	9

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Acknowledgement of Country

The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal people and Torres Strait Islander people as two unique peoples, each 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 Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

Background

Commissioner Natalie Lewis is pleased to provide the Education, Employment, Training and Skills Committee with research, information and advice on the Education (General Provisions) and Other Legislation Amendment Bill 2024.

Under the Family and Child Commission Act 2014, The QFCC has responsibilities to:

1. promote the safety, wellbeing and best interests of children and young people;
2. promote and advocate for the responsibility of families and communities to protect and care for children and young people;
3. improve the child protection system.

Our role is to influence systemic change to improve the safety and wellbeing of children and young people by driving accountability, raising awareness, amplifying voices and advocating for change. The QFCC has a vision that every Queensland child is loved, respected and has their rights upheld. We believe that for Queensland to achieve this vision, we need a future where:

- Queensland has a world-class system for protecting the rights, safety and wellbeing of children and their families;
- Queensland has an awareness of the issues experienced by children and their families and supports solutions to address them;
- Queensland acts on the views of children and their families;
- There is shared leadership for the rights, safety and wellbeing of children across Queensland.

Human Rights Legislation

Children possess inherent rights, as recognised by the United Nations Convention on the Rights of the Child (UNCRC) and the Queensland Human Rights Act 2019. The UNCRC was ratified by Australia on 17 December 1990 providing Australia with the obligation to comply with the provisions of the UNCRC and embed them into domestic law. It is therefore disappointing that, despite a review of the legislation being under way since 2021, the draft revisions do not include any reference to the Convention or child rights in general, in an Act that is so central to the lives of Queensland children. The UNCRC establishes that education should help children fully develop their personalities, talents and abilities and further emphasises that every child should be treated without discrimination, whatever their ethnicity, gender, religion, language, abilities or any other status¹.

Queensland's Child Protection Act 1999, for instance, includes a Charter of Child Rights² that outlines the responsibilities held by the State and the Chief Executive of the Department to uphold the rights held by the children in their care. Integration of child rights into legislation will help to put children, families and communities at the heart of education in Queensland. It will clarify the responsibility and accountability of the Department to provide quality public education universally across Queensland and regardless of family background and will provide greater clarity in the administration of some of the elements being changed, specifically, student disciplinary absences (SDAs), student support plans, unbroken access to learning, and home education.

A rights-based approach to the Act will better align with the Government's proposed Children's Plan for Queensland. In a recent submission to the Youth Justice Select Committee I proposed that the Queensland community come together to promise Queensland Children and Young People that we will:

- be unwavering in upholding and affirming their rights
- Listen to their views and take their voices seriously
- Be curious about their best interests as human beings
- Embed child-centred relational and developmental beliefs that see and support their identity and belonging without deficit and welfare-based discrimination
- Ensure there is one plan for them if they come into contact with child protection, law enforcement, health/mental wellbeing and justice systems – led by family and respecting important relationships
- Value, respect and support their families, communities and connections
- Be wholly accountable to systemic challenges, barriers and abuses through authentic accountability mechanisms
- Build real and courageous systems, processes and funding, co-designed with children and families.

While supporting the proposed update to the existing guiding principles to include inclusivity and student wellbeing, a Charter of Rights would establish the centrality of children and families in all legislative considerations and guide how all its elements are implemented.

¹ United Nations Human Rights Office of the High Commissioner. (1989). *Convention on the Rights of the Child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

² Child Protection Act 1999. (2024). *Schedule 1 Charter of rights for a child in care*. <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-010#sch.1>

This submission comments on the following proposed amendments:

- improving procedural fairness for decision-making processes for school disciplinary absences (SDAs), including introducing a new appeal right for accumulated short suspensions;
- a new student support plan (SSP) framework for students with disability, Aboriginal and Torres Strait Islander students and Preparatory year students;
- ensuring a student has access to education pending an enrolment decision;
- enhancing the regulation of home education and streamlining the home education registration process.

Student Disciplinary Absences (SDA)

The QFCC is pleased to see amendments in the Bill in relation to SDAs:

- to increase clarity in timeframes for decision making;
- increase review rights; and
- enhance access to education for students in vulnerable cohorts.

However, The Bill's revisions emphasise the good order and management of Queensland state schools, rather than reducing the impact on children struggling to learn, or with behavioural issues born out of disability or trauma.

Schools and educational settings should be places that foster healing and inclusivity rather than places that perpetuate trauma and exclusionary practices. The voices and perspectives of children, young people and families are often missing from legislation, policies and procedures. Children and young people will have better experiences at school when there is trust, respect and care being provided³. It is necessary to understand the deeper causes of student exclusion or disengagement and to take in the perspectives of children and young people who have been affected or who feel like they do not matter. As outlined in the QFCC's Growing up in Queensland report⁴, having positive learning experiences and successfully completing education has many benefits for all children and young people and for the future of our State.

In Queensland, children and young people with disability, who are Aboriginal or Torres Strait Islander, or who are living in out-of-home care (or a combination of these), are being suspended and excluded from school at significantly higher rates than their peers. An investigation by Queensland Advocacy for Inclusion and the Aboriginal and Torres Strait Islander Legal Service Ltd⁵, found that while Aboriginal and Torres Strait Islander students made up approximately 10 per cent of all Queensland state school enrolments, they received 23 to 30 per cent of all school exclusions between 2016–2020⁶. Aboriginal and Torres Strait Islander students with disability are five times more likely to receive suspensions, and students in out-of-home care with disability are six times more likely to receive suspensions, compared to students not in these cohorts⁷. The School Exclusion Project⁸, a report recently released by the National Indigenous Youth Coalition found in their studies that causes of school exclusions include a wide range of possible explanations, including learning difficulties, personal development and behavioural problems, a family that faced a range of other issues including lack of money, parental lack of interest, lack of social or school support structures and welfare provisions, inappropriate and inflexible curriculum and rigid school structures.

³ The Conversation. (2022). *If Australian schools want to improve student discipline, they need to address these 5 issues*. <https://theconversation.com/if-australian-schools-want-to-improve-student-discipline-they-need-to-address-these-5-issues-187993>

⁴ Queensland Family and Child Commission. (2024). *Growing up in Queensland: A story of child and family wellbeing*. https://www.qfcc.qld.gov.au/sites/default/files/2024-02/9022_QFCC_Growing%20Up%20in%20Queensland.WCAG%20reading%20order_01%20COMPRESSED.pdf

⁵ Queensland Advocacy for Inclusion and Aboriginal and Torres Strait Islander Legal Service Ltd. (2022). *The need for inquiry into school disciplinary absences in Queensland state schools*. <https://qai.org.au/wp-content/uploads/2022/02/QAI-and-ATSILS-submission-to-QHRC-re-SDAs.pdf>

⁶ Queensland Family and Child Commission. (2023). *Child Rights Report 2023*. <https://www.qfcc.qld.gov.au/child-rights/report>

⁷ A Right to Learn. (2023). *Keep disabled kids in class*. <https://www.arighttolearn.com.au/#:~:text=The%20A%20Right%20to%20Learn,exclusions%20in%20Queensland%20State%20Schools>

⁸ National Indigenous Youth Coalition. (2024). *The School Exclusion Project*. <https://static1.squarespace.com/static/5e26530afa5e9232be77fe75/t/65faabbb211a141b63fc4e41/1710926790681/NIYEC-The-School-Exclusion-Project-Digital-FA.pdf>

It is clear that overuse of SDAs does not address ‘problem’ behaviour or the root causes of that behaviour, but simply removes ‘the problem’ from the classroom. Their use sets children and young people up for long-term disadvantage. Given that it is students with backgrounds of adversity or disadvantage that are disproportionately affected by SDAs, their current use can compound already existing disadvantage. Students denied essential learning opportunities can go on to experience poorer mental health outcomes and increased risk of entering the criminal justice system when they receive unnecessary suspensions and exclusions from school. Additional impacts include prolonged unemployment, increased stigma and feelings of rejection⁹.

The compounding effect of the vulnerabilities of the cohorts mentioned above, necessitates reform that addresses the intersectionality, providing support as opposed to punishment in response. This requires intentional, co-ordinated action from multiple portfolios to promote and protect the rights of children and young people.

Appeals

Given the significant vulnerabilities that some children and young people experience, there is particular importance in considering a child’s situation holistically when deciding a school suspension or exclusion.

The QFCC is currently having conversations with children, young people and families about their experiences of being suspended or excluded from school. While this project is in its early stages, one parent mentioned that her child was not provided with learning materials during the suspension. This parent also mentioned concerns about her child being removed from the learning environment and isolated from their peers whilst serving the suspension at home, rather than at the school.

The QFCC is pleased to see that amendments are being made to the Bill to offer the option of an appeal against a short suspension and provide education to students who are in the process of having their enrolment application reviewed. However, for some families, engaging with an appeals process would be difficult without support and they will simply not engage with such a process. It is necessary to reduce the number of instances of suspensions and exclusions overall, not just modify the appeals process.

⁹ The Centre for Inclusive Education. (2023). *Use of Suspensions in QLD State Schools*. <https://research.qut.edu.au/c4ie/events/overuse-of-suspensions-in-qld-state-schools-a-long-way-from-equity-and-excellence/>

Home Education

The QFCC's Child Death Review Board Annual Report 2022 – 23¹⁰ outlined that in recent years, home education has become an increasingly popular option for learning in Queensland. As of 5 August 2022, 8,461 students were registered for home education in Queensland, an increase of 69% from the 5,008 students registered in 2021. By comparison, only 722 students were registered for home education in Queensland in 2011. The Board held concerns about the current oversight of home education and an insufficient capture of the child's views and wishes within the home education decision-making process.

Most parents choosing to homeschool their child are doing it because they have their child's best interests at heart. Further regulating home education before fully understanding and responding to the reasons why so many parents are turning to home education may further risk the education of already vulnerable children. It would also be beneficial to know if there is correlation between the number of SDAs in Queensland and the rising numbers of home schooling. If such research has been completed by the Department as part of the legislative drafting process, it should be made public so as to inform community understanding of the issues.

The QFCC has heard from parents that the current education system failed to support their child's individual learning needs, and this is what led to the decision to home school. Parents felt that accessing home schooling was the only option left to them and their child with a disability. Some of these children were suspended or excluded, as a direct consequence of the school being unable to adequately support or provide appropriate modifications. This process itself would be distressing for the child and their family.

¹⁰ Queensland Family and Child Commission. (2023). *Child Death Review Board Annual Report 2022 – 23*. <https://documents.parliament.qld.gov.au/tp/2024/5724T347-DB90.pdf>