
QUT's Centre for Inclusive Education (C4IE) produces research on matters that affect students in education with the aim of improving the educational experiences and outcomes of *all*, particularly those experiencing marginalisation. One of C4IE's objectives is to address knowledge gaps and positively influence attitudes by disseminating research evidence, engaging in public debate, and providing quality professional learning opportunities. C4IE makes this submission in response to the South Australian's government proposed amendments to the *Education and Children's Services (Inclusive Education) Amendment Bill 2025 (the Amendment Bill)* and the *Education and Children's Services (Exclusionary Discipline) Amendment Regulations 2025 (the Amendment Regulations)*.

The Centre for Inclusive Education (C4IE) commends the South Australian government proposal to amend the *Education and Children's Services (Inclusive Education) Amendment Bill 2025 (the Amendment Bill)* and the *Education and Children's Services (Exclusionary Discipline) Amendment Regulations 2025 (the Amendment Regulations)* to support the implementation of the agreed elements of Recommendations 7.1 and 7.2 of the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. To ensure that inclusive education becomes a reality for students in South Australia, clarity of the word 'inclusive' must be addressed in the legislation. We note that a definition of inclusive education that clarifies its exact meaning is already provided through General Comment No. 4 (GC4) on Article 24 of the Convention on the Rights of Persons with Disabilities ([CRPD]; United Nations, 2016):

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion (para 11).

GC4 makes clear distinction between other forms of education that do not constitute inclusion. A clear definition of inclusion that makes explicit distinction between segregation, exclusion and integration is fundamental to ensure that legislation will be enacted in the same manner is being intended. This 24-page document, published 10 years after the CRPD, reflects the Committee's intended interpretation of Article 24.

Our submission to the South Australian government in response to the proposed amendments is informed by the guidance for interpretation of the CRPD provided in GC4.

- 3** The Amendment Bill makes it clear that one of the objects of the Act is to ensure that the provision of education and children's services in South Australia is inclusive by enabling the participation of children and students with a disability and supporting the development of their personalities, talents, creativity and mental and physical abilities to their fullest potential. This proposed change has been informed by the wording in Article 24 of the Convention on the Rights of Persons with Disabilities.

Does the proposed wording of the new object appropriately reflect the ambition and commitment to inclusion that you want to see in the Act?

The Centre for Inclusive Education commends the South Australian government for proposing changes that are informed by Article 24 of the Convention on the Rights of Persons with Disabilities. However, the wording needs to be explicit and **recognise the right** to inclusive education (as previously recommended in the Final Report of the *Inquiry into suspension, exclusion and expulsion processes in South Australian government schools* (Graham et al., 2020).

We recommend that the wording of:

- (i) 7(1) be amended to reflect the right to an inclusive education "ensure that children and students with a disability are supported to enjoy **the right** to an inclusive education".
- (ii) 7(1) be amended to "the **access and** participation of children and students with a disability, **on the same basis as a student without a disability**". The addition of "access and" recognises that participation is dependent on access. The addition of "on the same basis as a student without disability" is consistent with the *2005 Disability Standards for Education* (DSE; Cth).
- (iii) 7(1) (a-d) be amended to provide clarity on the setting in which participation and access are to be enabled, **making clear the expectation that students with disability should be enrolled in their local schools, on the same basis as students without disability**. This detail is critical for ensuring genuine inclusion. Currently, Section 7(1) does not specify any educational context, and (c) describes the provision of a "range" of education and children's services to meet the needs of "all groups in the community", potentially suggesting different types of schools for students with and without disability. According to explicit definitions provided in General Comment No. 4 on Article 24, the provision of education in separate environments based on disability constitutes segregation.

- 5** Currently, the Act sets out that children and students should not be unlawfully discriminated against on the ground of their gender, mental or physical impairment, religion, race, nor that of their parents. The Amendment Bill will amend the Act to replace the reference to 'mental and physical impairment' with a reference to 'disability'. To support this change, the Amendment Bill will also insert into the Act a new definition of disability that is consistent with the definition of disability in the Commonwealth Disability Discrimination Act 1992.

Do you support replacing the reference to 'mental and physical impairment' with a reference to 'disability'?

We agree with the proposal to delete "mental or physical impairment" from Section 7(4)(d) and substitute it with the word "disability."

7 Under the Act, the Chief Executive of the Department for Education has the power to direct that a specified child be enrolled in a specified government school (including a special school) if the Chief Executive is satisfied that:

- the child has disabilities or learning difficulties that make it necessary or appropriate to do so; or
- it would, having regard to the child's health, safety or welfare, be appropriate to do so; or
- it would, having regard to the health, safety or welfare of students and staff at another school, be appropriate to do so.

If the Chief Executive makes such a direction, the child may be refused enrolment in any government school other than the specified school. The Amendment Bill will amend the Act to remove the Chief Executive's power to direct that a child be enrolled in a specified government school on the basis that the child has disabilities or learning difficulties that make it necessary or appropriate to do so.

Do you support removing the power of the Chief Executive to direct that a child be enrolled in a specified government school on the basis of their disabilities or learning difficulties?

We support **removing the power** of the Chief Executive to direct that a child be enrolled in a specified government school on the basis of disability. However, we note that this amendment removes only the power to direct that a child be enrolled in a specific school on the basis of disability. While this may protect against discrimination solely on the basis of disability, it does not prevent the more common instance, which is where students with disability are segregated on the basis of "safety" for themselves and/or other students. Both the Disability Royal Commission and the *Inquiry into suspension, exclusion and expulsion processes in South Australian government schools* (Graham et al., 2020) found that many such students are in fact receiving inadequate adjustments and support, negatively impacting their access to and experience of education. As the lack of relevant adjustments and evidence-based supports manifests behaviourally, it is critical that the amendment of Section 62 closes this loophole. This could be achieved by stipulating that students with disability, especially those with complex learning profiles, must have been provided with **genuine opportunities to access and participate in education** through enrolment in their local general education setting with evidence-based adjustments and supports.

We recommend:

- (i) that the wording "Before giving direction under this section, the Chief Executive must **ensure the child has had genuine opportunity for enrolment in their local school with evidence-based adjustments and supports** and must take reasonable steps to consult with" is included in 62 (2).

9 In line with the Commonwealth Disability Discrimination Act 1992, the Amendment Bill will amend the Act to provide that a principal of a government or non-government school must not refuse to enrol a child on the basis that the child has a disability unless the principal believes on reasonable grounds that to do so would cause unjustifiable hardship to the school.

Do you support this change?

We agree that a principal of a government or non-government school must not refuse to enrol a child on the basis that the child has a disability and we support the proposed change in the legislation. **However, we note that further clarification is needed in relation to adjustments and unjustifiable hardship.** The legislation must clearly define the duty to make adjustments, and the burden of proof regarding whether the enrolment of a child with a disability at the school would cause unjustifiable hardship lies with the education provider.

We recommend:

- (i) In Section 63A (1), we recommend the wording to state "A principal of a school must not refuse to enrol a child on the basis that the child has a disability unless the **duty to make adjustments** would cause unjustifiable hardship to the school and the school community."

- (ii) Include in Section 63A (1) that “the **burden of proving** that the enrolment of a child with disability would impose **unjustifiable hardship lies on the education provider** claiming unjustifiable hardship.”

We make these recommendations to ensure clear alignment with the *1992 Disability Discrimination Act (Cth)* in relation to reasonable adjustments and burden of proving unjustifiable hardship. These recommendations protect students and their associates from the burden of proving that the child’s enrolment would not impose unjustifiable hardship.

11 The Amendment Bill will amend the Act to require every government and non-government school principal to report annually to the Minister de-identified information on the number of children with a disability that were refused enrolment at the school (including if there were no such children), the number of students with a disability whose enrolment was cancelled, and any measures taken by the school to reduce the number of instances in which the enrolment of children or students with a disability was refused or cancelled.

Do you support including a requirement in the Act that all school principals report this information to the Minister?

We commend the South Australian government for this proposed amendment and support including a requirement in the Act that all school principals (including principals of non-government schools) report this information to the Minister.

We recommend two additions:

- (i) that principals be required to **specify type of disability** when reporting each enrolment refusal or cancellation, and
- (ii) that principals be required to **provide a reason** for each enrolment refusal or cancellation.

We make these recommendations because these data will provide the South Australian government with useful information for system planning and accountability. Nationally Consistent Collection Data (NCCD) disability categories can be used (e.g., physical, sensory, cognitive, social-emotional) to preserve deidentification.

12 If a school principal, without reasonable excuse, refuses or fails to comply with the requirement to report this information to the Minister, a maximum penalty of \$2500 may be applied.

Do you support this penalty?

We appreciate the intent behind the proposal of a penalty for refusal or failure to comply with the requirement to report this information to the Minister, but **we do not support it**. Our reasons for not supporting this proposal are outlined below and these are followed by our recommended alternative.

- o It is not clear whether this penalty will be paid by private individuals or by school budgets. If the latter, the penalty will have little impact.
- o It is also unclear as to where the payments go and what those funds will be used for. Schools should be supported to do the right thing, not punished when they get it wrong.

We recommend:

- (i) The South Australian government develop a compliance rating system that recognises compliance and highlights non-compliance with publication of these data on a public portal that enables full transparency. This is not unlike various Australian government initiatives aimed at driving quality through accountability in other levels of education, for example, Quality in Learning and Teaching (QILT).
- (ii) That schools identified as non-compliant are identified as ‘needing support’ with the requirement that they invest in reputable, evidence-based training to improve knowledge, culture, and practice.

Note that we are not recommending the type of naming/shaming approach that has been implemented elsewhere, most notably by the Office for Standards, Children's Services and Skills (Ofsted) in England, where there have been reports alleging impact on the mental health of school leaders and staff, including suicide (Waters & Palmer, 2023).

14 The Minister will be required to annually publish information relating to the refusal or cancellation of enrolment of children or students with a disability at government and non-government schools.

Do you support requiring the Minister to publish this sector level information?

We support requiring the Minister to publish this sector level information. As per our response to Question 11 we also recommend that these data include information on category of disability and reason for enrolment refusal or cancellation.

16 The use of exclusionary discipline (suspension, exclusion and expulsion of students) in government schools is governed by the provisions of the Act and Regulations and is supported by a comprehensive departmental procedure. The Amendment Bill will amend the Act to require that each non-government school has a published policy on the use of 'exclusionary discipline' in relation to students which is commensurate with any policy regarding the suspension, exclusion or expulsion of students from government schools. The Amendment Bill sets out a range of matters that must be addressed in a non-government school's policy, including the types of exclusionary discipline that may be used at the school, when they may be used, and who may authorise their use (among others).

Do you support requiring non-government schools to have a published policy on the use of exclusionary discipline?

We commend the South Australian government for taking steps to increase accountability for non-government schools with the aim of ensuring that schools in these sectors meet their obligations under international human rights law and Australian anti-discrimination legislation. We support requiring non-government schools to have a published policy on the use of exclusionary discipline that is **commensurate** with those required in the government system.

18 Are there any other matters that should be addressed in a non-government school's policy on the use of exclusionary discipline, in addition to those already listed in the Amendment Bill?

There is nothing in this amendment to communicate what would be **appropriate policy**. A key recommendation for amendment to the Act in the Final Report of the *Inquiry into suspension, exclusion and expulsion processes in South Australian government schools* (Graham et al., 2020) was to include the stipulation that "any form of exclusionary discipline may only be used as a last resort, and only for serious behaviours to be described in the Act." Another key recommendation from the Inquiry was that the Act be amended to "Improve clarity and reduce subjectiveness of interpretation by revising and making explicit the grounds permissible for the use of exclusionary discipline, as per international best practice examples, including through: (i) the introduction of levels of incident severity (lower level and severe), and (ii) providing a list of approved responses for each level, (iii) proscribing the use of all forms of exclusionary discipline for lower level (minor) incidents, (iv) proscribing the use of any form of exclusionary discipline—for any reason—to children in Reception through to end Grade 2."

We recommend:

- (i) that these amendments be made to the Act, and
- (ii) that they apply equally to government and non-government schools.

- 20** The Amendment Bill will amend the Act to require every government and non-government school principal to report annually to the Minister de-identified information on:
- the number of times students with a disability were suspended, excluded or expelled from the school (including if there were no such times)
 - the number of students with a disability that were suspended, excluded or expelled from the school (including if there were no such students)
 - of the students with a disability that were suspended, excluded or expelled from the school–
 - the number of instances each student was suspended, excluded or expelled
 - in relation to each such instance – the number of school days for which that student was suspended, excluded or expelled
 - the grounds on which the student was suspended, excluded or expelled from the school
 - of the total number of students with a disability enrolled at the school, the proportion of those that were suspended, excluded or expelled.

Do you support including a requirement in the Act that all school principals report this de-identified information to the Minister?

We commend the South Australian government for proposing the detailed reporting of deidentified information by principals to the Minister in relation to the exclusionary discipline of students with disability, with the same reporting standards required of both non-government schools and government schools.

Additional to this amendment, **we recommend**:

- (i) that the South Australian government **implement Recommendation 28(c)** from the *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools* (Graham et al., 2020) which was to “make exclusionary discipline data **[for all students]** publicly available **and disaggregate** by gender, year level, priority group status, school phase, category of school, reason and duration to enable greater public scrutiny of progress towards reduction in use.”
- (ii) that Sections 80A and 81B be amended to stipulate that these data be made **publicly accessible** (in addition to the requirement for a published report under 80A(2) and 81B(2)).

We make these recommendations as there are known intersectionalities among students with disability and other priority equity groups, as shown in research from both the South Australian and Queensland education systems (Graham et al., 2020; 2023). This recommendation was also made [Recommendation 27] in the *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools* led by Graham (2020). Requiring only the reporting on disability is a missed opportunity to shine a light on other discriminatory practices, and how these are compounded for students with disability who also have these other priority equity characteristics.

The consequence of not making these recommended amendments is that the reported trends get badged as a “disability” issue, when it is often a more complex interplay of these multiple factors that are contributing to this discrimination. Similarly, without requiring all schools to publish the data for all students (not just those with disability), it is impossible to gauge the scale and significance of the problem.

Similarly, we recommend that government and non-government schools be required to provide the details specified in the proposed amendment disaggregated by *type* of disability. Children with emotional and/or behavioural problems are particularly susceptible to suspension from school relative to children with other (e.g., physical or learning disabilities), as evidenced in New South Wales (Laurens et al., 2021) and South Australian data (Graham et al., 2020; Graham et al., 2023; Graham et al., 2024). Such information would be useful to informing the selection and implementation of appropriate supports to schools.

22 If a government or non-government school principal fails to comply with the requirement to report this information to the Minister, a maximum penalty of \$2500 may be applied.

Do you support this penalty?

As per our response to Question 12, we appreciate the intent behind the proposal of a penalty for refusal or failure to comply with the requirement to report this information to the Minister, but **we do not support it**.

We recommend:

- (i) That this information be included in a compliance rating system that recognises compliance and highlights non-compliance with publication of these data on a public portal that enables full transparency.
- (ii) That schools identified as non-compliant are identified as 'needing support', with the requirement that they invest in reputable, evidence-based training to improve knowledge, culture, and practice.

24 The Minister will be required to publish information relating to the suspension, exclusion and expulsion of students with a disability at government and non-government schools.

Do you support requiring the Minister to publish this sector level information?

We agree and commend the decision to require the Minister to publish information relating the suspension, exclusion and expulsion of students with disability at government and non-government schools. However, further distinguishing information is necessary to make these data useful for measurement and accountability purposes. In Queensland and NSW, these data are published at an area level which can help to assess variation by socioeconomic status of an area and thereby contextualise rates of suspension. Alternatively, data could be reported by ICSEA bands or quartiles.

We recommend:

- (i) That the South Australian government include these data in the compliance rating system that we recommended in response to Question 12.
- (ii) That the data be disaggregated by socio-educational advantage (e.g., ICSEA bands or quartiles).
- (iii) That schools identified as non-compliant are identified as 'needing support', with the requirement that they invest in reputable, evidence-based training to improve knowledge, culture, and practice.

26 In determining whether to suspend, exclude or expel a student from a government school, the principal of the school, or the Chief Executive (as the case requires), must have regard to the matters listed in regulation 26 of the Regulations. Currently, these matters include the severity and frequency of the misbehaviour of the student; the student's prior record of behaviour and response to previous sanctions; and the extent to which adjustments have been made to support the participation of that student, or students with a disability generally, at the school. The Amendment Regulations will expand regulation 26 to include some additional matters that the principal of the school must have regard to when making their determination. These include the particular needs of the student; the age of the student; whether an individual behaviour plan for the student is in place and whether the plan is being implemented; whether the student has a disability, and if so, the extent to which appropriate adjustments have been made; and whether there are any reasonable alternatives to exclusionary discipline that are available in the circumstances.

Do you support inserting the additional matters that a government school principal, or the Chief Executive, must have regard to when determining whether to suspend, exclude or expel a student?

We support the South Australian government's proposed insertion of the additional matters that a government school principal, or the Chief Executive, must have regard to when determining whether to suspend, exclude or expel a student. However, there are critically important considerations missing.

We recommend:

- (i) Availability of **safe and appropriate adult supervision** for the duration of the exclusion for children under 18 years of age

This recommendation stems from the *Inquest into the death of Harmony* by the Coroner's Court of New South Wales. Professor Graham was called as an Expert Witness to this inquest and reviewed the entire case history, which was not dissimilar with regards to the unchecked use of multiple suspensions, lack of education provision, and consideration of students' home circumstances to those observed during the South Australia Inquiry (Graham et al., 2020).

Further, we refer to recommendations made in the *Final Report of the Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools* (Graham et al., 2020), which are echoed by similar recommendations in the forthcoming Australian Institute of Criminology Research Report on *Out-of-school suspension and police contact: Identifying opportunities to disrupt the school-to-prison pipeline* (Laurens et al., in press), that the Act be amended to include explicit thresholds to reduce the incidence of multiple suspensions, and to implement additional safeguards for Aboriginal students and students in care.

Specifically, these recommendations were to:

- Ensure that an adequate educational program can be provided for the duration of the exclusion period [Recommendation 7(b)]
- Require written approval from Education Directors to allow more than four (4) take homes in a school year [Recommendation 13(g)]
- Require written approval from Education Directors to allow more than two (2) suspensions or more than 10 days suspension in a school year [Recommendation 13(h)]
- Ensure that trauma-informed practices have been implemented, and that culturally appropriate pedagogies are in place and being employed with fidelity prior to issuing a take home or suspension. [Recommendation 13(e)].

28 The Amendment Bill will amend the Act to extend the application of regulation 26 to non-government schools, so that in determining whether to suspend, exclude or expel a student from a non-government school a person will also have to have regard to the matters listed in the regulation.

Do you support extending the application of regulation 26 to non-government schools?

We support the proposal of the South Australian government to extend the application of Regulation 26 to non-government schools. Further, the additional matters to be regarded by government school principals in the determination of exclusionary discipline must also be required of non-government school principals.

As per our response to Question 26, in relation to government schools, we propose extending these additional matters to encompass further critical considerations, including:

- the availability of safe and appropriate adult supervision,
- the provision of an educational program for the duration of the exclusionary discipline period,
- written approval from Education Directors for issuing exclusionary discipline beyond specified thresholds, and
- ensuring the implementation of trauma-informed practices and culturally appropriate pedagogies prior to issuing exclusionary discipline.

30 Are there any other measures that you think should be considered for inclusion in the Act to support inclusive education, prevent discrimination and protect the rights of children and students with disability?

The South Australian government should consider including in the Act an explicit definition of inclusive education with wording that aligns with General Comment No. 4 of Article 24 of the Convention on the Rights of Persons with Disabilities ([CRPD]; United Nations, 2016). As discussed in the preamble of this submission, General Comment No. 4 explicitly defines inclusion while distinguishing it from segregation, exclusion and integration. Such clarity will enable the Act to be enacted as intended by legislation.

31 Is there any other feedback that you would like to provide in relation to the Amendment Bill or the Amendment Regulations?

Every state in Australia should aspire to this demonstration of reform integrity by the South Australian government. All children have a right to an inclusive education whether they attend government or non-government schools. Non-government schools receive significant public funding and the oft-discussed inequity between systems extends beyond wealth to inequalities in accountability and transparency. For too long, non-government schools have been empowered by a lack of scrutiny to avoid their legislative obligations under the 2005 Disability Standards for Education, and this has led to an overrepresentation of students with disability in government schools, which are comparatively underfunded.

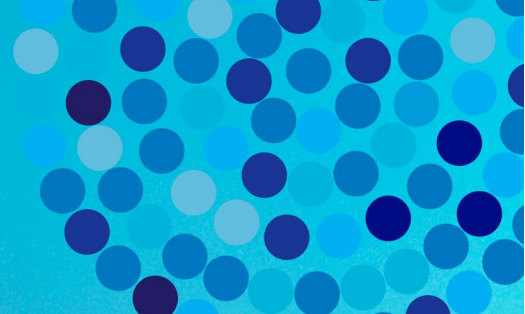
We therefore commend the proposed amendments to the *Education and Children's Services (Inclusive Education) Amendment Bill 2025 (the Amendment Bill)* and the *Education and Children's Services (Exclusionary Discipline) Amendment Regulations 2025 (the Amendment Regulations)*.

However, we believe the South Australian government could and should go further by implementing recommendations made almost five years ago in the Graham Report (2020). Further, we note that many of the recommendations that the former Marshall government accepted either in full or in principle have not been implemented by this government.

These include recommendations to:

- abolish exclusions, the length of which are wildly out-of-step with every other state and territory in the country [Recommendation 13(f)]
- decommission the Flexible Learning Options (FLO) and Alternative Learning Programs (ALP) [Recommendation 25(a)]
- implement additional safeguards for priority equity groups [Recommendation 13(e)]
- introduce statutory thresholds to prevent overuse of suspension and exclusion on vulnerable children [Recommendations 13(g,h)].

Absence of the recommended thresholds leaves the South Australian government without means to reduce the accumulation of disciplinary absences, which was the principal instigator for the Inquiry. Students with disability will benefit from the proposed amendments but they are not the only overrepresented group, and we call on the Minister to grasp this opportunity to make changes that will protect and benefit all students who face disproportionate risk, especially Aboriginal students and students in care.



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