

Inclusive Education

Implementing
recommendations of the
Royal Commission into
Violence, Abuse, Neglect and
Exploitation of People with
Disability
Explanatory paper



Government
of South Australia

Department for Education

Introduction

The **Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability** was delivered to the Australian Government on 29 September 2023. In this report, the Royal Commission recommended how to improve laws, policies, structures and practices to ensure a more inclusive and just society.

Of the 222 recommendations made by the Royal Commission, 129 were South Australia's responsibility, either individually or in partnership with the Australian Government and other state and territory governments. Fifteen recommendations related to the education sector.

In July 2024, South Australia's initial response to the Final Report was released, and in December 2024 the South Australian Government, together with Catholic Education South Australia (CESA) and the Association of Independent Schools of South Australia (AISSA) jointly announced a cross-sectoral response to implementing key recommendations of the Royal Commission related to inclusive education.

To implement some elements of this cross-sectoral response, it is necessary to amend South Australia's education laws. The **draft Education and Children's Services (Inclusive Education) Amendment Bill 2025** and the **draft Education and Children's Services (Exclusionary Discipline) Amendment Regulations 2025** will change those laws to support the implementation of the agreed elements of Recommendations 7.1 and 7.2 of the Royal Commission.

The proposed changes aim to support inclusive education and fairness and reduce discrimination and exclusion for students with disability. The changes endeavour to support greater transparency through data collection and reporting about enrolment and the use of exclusionary discipline for students with disability. The changes also support the provision of accessible information for students with disability and their families in relation to the use of exclusionary discipline.

This explanatory paper outlines the changes that would be made by the draft Amendment Bill and draft Amendment Regulations and what the effect of the changes would be.

The South Australian Government would like your feedback on the proposed changes.

How to provide feedback

To provide feedback:

- Go to [yoursay.sa.gov.au/inclusive education](https://yoursay.sa.gov.au/inclusive-education) to download a copy of the draft Amendment Bill and Amendment Regulations.
- If you have any questions, read the FAQs on YourSAy, or contact the department's Legislation Reform Team at edlawreform@sa.gov.au
- Provide your written submissions to edlawreform@sa.gov.au

Consultation closes Friday, 13 June 2025 at 5:00pm.

Information provided in any submissions will be considered in the finalisation of the proposed amendments and may be referred to publicly in discussion of the reforms. When providing your feedback, please indicate if you would like your feedback to be treated as confidential, in full or part, and the reason(s) why.

Under the *Freedom of Information Act 1991*, the Department for Education may also be required by law to release submissions to a third party. If a request is made under that Act, you will be consulted prior to any decision to disclose information that may identify you.

Terms used in this paper

the Act means the *Education and Children's Services Act 2019*

the Regulations means the *Education and Children's Services Regulations 2020*

Amendment Bill means the draft Education and Children's Services (Inclusive Education) Amendment Bill 2025

Amendment Regulations means the draft Education and Children's Services (Exclusionary Discipline) Amendment Regulations 2025

Chief Executive means the Chief Executive of the Department for Education

the Minister means the Minister for Education, Training and Skills

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

special school means a government school established for the benefit of a particular class of children who require some special form of education, treatment or care

disability, in accordance with clause 3 of the Amendment Bill, aligns with the definition in the Commonwealth *Disability Discrimination Act 1992* and will mean—

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

and includes a disability that—

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

Royal Commission Recommendation 7.1

Provide equal access to mainstream education and enrolment

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to 'unjustifiable hardship' in the sense used in the *Disability Discrimination Act 1992* (Cth).

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

*Note: this explanatory paper details changes to relevant South Australian laws to implement relevant elements of Recommendation 7.1. Other elements may be implemented through operational or policy changes.

Amendments proposed to support the implementation of Recommendation 7.1

Objects and principles

The objects and principles of an Act serve to outline the legislation's purpose and guide its administration. The objects and principles of the Act are set out in section 7.

Clause 5 of the Amendment Bill proposes to amend the objects of the Act to include a new object that reflects that education and children's services provided under the Act are to be inclusive of all children and students 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 Article 24 of the *Convention on the Rights of Persons with Disabilities*.

One of the principles in section 7 of the Act currently sets out that children and students should not be unlawfully discriminated against on the ground of their gender, mental or physical impairment, religion or race, nor that of their parents.

Clause 5 of the Amendment Bill proposes to amend this principle to replace the reference to 'mental or physical impairment' with a reference to 'disability'.

To support these amendments, clause 3 the Bill proposes to insert into the Act a new definition of 'disability' that aligns with the definition of disability in the Commonwealth *Disability Discrimination Act 1992*.

Chief Executive's power to direct enrolment

Under section 62(1) of the Act, the Chief Executive 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 –

- (a) the child has disabilities or learning difficulties that make it necessary or appropriate to do so; or
- (b) it would, having regard to the child's health, safety or welfare, be appropriate to do so; or
- (c) 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 gives such a direction, the child may be refused enrolment in any government school other than the specified school.

The Act and Regulations require that before giving a direction the Chief Executive must consult with each person responsible for the child and must be satisfied that the circumstances that give rise to the direction can be appropriately managed at the specified school.

Clause 6 of the Amendment Bill proposes to amend the Act to remove the Chief Executive's power to direct that a child be enrolled in a specified school on the basis that the child has disabilities or learning difficulties that make it necessary or appropriate to do so.

The Chief Executive's power to direct that a specified child, including a child with disability, be enrolled in a specified school (including a special school) on health, safety and welfare grounds will remain.

Refusal of enrolment

Clause 7 of the Amendment Bill proposes to amend the Act to provide that enrolment in a government or non-government school should not be refused on the basis of a child's disability, unless the principal believes on reasonable grounds that the enrolment would cause *unjustifiable hardship* to the school.

This proposed amendment has been informed by the concept of unjustifiable hardship that is found in the Commonwealth *Disability Discrimination Act 1992*.

Clause 7 sets out that in determining whether something would impose an unjustifiable hardship on a school, all of the relevant circumstances of the particular case must be taken into account by the principal, including:

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;

Example— One of the circumstances covered by paragraph (a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

- (b) the effect of the disability of any child concerned;
- (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the school;
- (d) the availability of financial and other assistance to the school;
- (e) any relevant action plans given to the Australian Human Rights Commission under section 64 of the *Disability Discrimination Act 1992* of the Commonwealth.

Reporting of refusal or cancellation of enrolment

Clause 7 of the Amendment Bill also proposes to amend the Act to require that each government or non-government school principal must 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 (including if there were no such students);
- 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.

The Amendment Bill sets out that where this information is provided to the Minister by a principal, it will not be subject to disclosure under the *Freedom of Information Act 1991*.

Clause 7 proposes the inclusion of a penalty of up to \$2500 if a school principal does not comply with these reporting requirements.

It is noted that this proposed penalty is consistent with the penalty already in place under section 75 of the Act (where a maximum penalty of \$2500 may be applied if a government or non-government school principal does not report a student's persistent non-attendance or non-participation to the Chief Executive).

Clause 7 further proposes that the Minister will be required to publish a report annually of the following de-identified information at a sector level:

- the number of times children with a disability were refused enrolment in both government and non-government school sectors

- the number of times the enrolment of students with a disability was cancelled in both government and non-government sectors
- information regarding any trends identified in relation to the refusal or cancellation of the enrolment of children or students with a disability and the measures taken by government and non-government schools to reduce the number of refusals or cancellations.

Royal Commission Recommendation 7.2

Prevent the inappropriate use of exclusionary discipline against students with disability

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
 - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
 - in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children
 - require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.
- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline
- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992* (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.

Amendments proposed to support the implementation of Recommendation 7.2

Use of exclusionary discipline

Exclusionary discipline is a response to a child's behaviour that results in the child's suspension, exclusion or expulsion from school.

Exclusionary discipline in government schools is dealt with in Part 7, Division 3 of the Act, and in Part 6, Division 4 of the Regulations.

The legislative provisions for government schools are supported by a departmental procedure, the [*Suspension, exclusion and expulsion of students procedure*](#), which guides school leaders in the use of suspensions, exclusions and expulsions to support safe and positive behaviour in schools.

Forms of exclusionary discipline in government schools

Suspensions are used in government schools as a short-term response to behaviour that endangers safety or interferes with teaching and learning. Under the Act, the principal of a government school may suspend a student from attending the school for 1-5 days.

Exclusions are a longer-term response to serious behaviour that endangers safety or persistently interferes with teaching and learning. Under the Act, the principal of a government school may exclude a student from attending the school for 4-10 weeks. The Chief Executive can give directions to an excluded student in relation to the student undertaking education, work or other relevant activity during the period of the exclusion.

Expulsions are the strongest form of exclusionary discipline. They are used rarely, in response to behaviour that poses an unmanageable risk to the health, safety and welfare of members of the school community. Under the Act, the principal of a school may expel a student who is at least 16 years old from a school for 6-18 months. The Chief Executive, on the recommendation of the principal, may expel a student who is at least 16 years old from all government schools for 12 months – 5 years.

The Regulations, in regulation 26, set out the matters that must be considered by a government school principal, or the Chief Executive (as the case requires), before suspending, excluding or expelling a child from a government school.

Regulation 26 currently sets out that, in determining whether to suspend, exclude or expel a student, a government school principal or the Chief Executive must have regard to:

- (a) the severity and frequency of the misbehaviour of the student; and
- (b) the student's prior record of behaviour and response to previous sanctions (if any); and
- (c) if relevant, the extent to which adjustments have been made to support the participation of that student, or students with a disability generally, at the school; and
- (d) any other relevant matter.

Exclusionary discipline in non-government schools

Catholic and Independent schools are not subject to the provisions of the Act and Regulations in relation to exclusionary discipline and determine their own approaches to suspension and other types of exclusionary discipline.

Clause 10 of the Amendment Bill proposes to amend the Act to require that the governing authority of each non-government school has a published policy on the use of exclusionary discipline that is, as far as reasonably practicable, commensurate with that for government schools. The Amendment Bill specifies that these policies must include the:

- school's general approach to managing student behaviour and the purpose for the use of any exclusionary discipline
- types of exclusionary discipline that may be used and when they may be used
- persons, or holders of a particular office, that may authorise the use of each type of exclusionary discipline in relation to students of the school
- the maximum length of time for which a student may be suspended or excluded from the school that will ordinarily apply
- the maximum length of time for which student may be suspended or excluded in exceptional circumstances
- process for a student to return to the school following a period of suspension or exclusion
- any other matters prescribed by the regulations.

Clause 10 of the Bill also proposes to amend the Act to require that a person, before suspending, excluding or expelling a student from a non-government school, must consider any matters specified in the Regulations.

It is accordingly proposed to amend the Regulations (by way of regulation 3 of the Amendment Regulations) to extend the application of regulation 26 to non-government schools, to provide that a person must consider the matters specified in this regulation before suspending, excluding or expelling a student from a non-government school.

Additional considerations

It is also proposed to amend regulation 26 (by way of regulation 4 of the Amendment Regulations) to include some additional matters that must be considered in making a decision to suspend, exclude or expel a student from a government or non-government school. The additional matters include:

- the particular needs of the student; and
- the age of the student and the particular effects that exclusionary discipline may have on the student because of their age; and
- whether there is any individual behaviour plan for the student in place and whether the plan is being implemented; and
- whether the student has a disability, and if so, the extent to which adjustments have been made to support the participation of that student, or students with a disability generally, at the school; and
- whether any reasonable alternatives to suspension, exclusion or expulsion are available in the circumstances.

Reporting of suspension, exclusion and expulsion

Clauses 9 and 10 of the Amendment Bill propose to amend the Act to require that each government and non-government school principal must 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; and
 - in relation to each such instance- the number of school days for which that student was suspended, excluded or expelled; and
 - the grounds on which the student was suspended, excluded or expelled;
- of the total number of students with a disability enrolled at the school- the proportion of those that were suspended, excluded or expelled

The Amendment Bill sets out that where this information is provided to the Minister by a principal, it will not be subject to disclosure under the *Freedom of Information Act 1991*.

Clauses 9 and 10 propose the inclusion of a penalty of up to \$2500 if a government or non-government school principal does not comply with these reporting requirements. The inclusion of this proposed penalty is consistent with the new penalty proposed at clause 7.

Clauses 9 and 10 further provide that the Minister will be required to publish a report annually of the de-identified information provided at a sector level on the suspension, exclusion and expulsion of students with a disability in government and non-government schools.