

Addressing non-attendance at school

Proposed amendments to the
*Education and Children's Services
Act 2019*

Explanatory paper



Introduction

Compulsory education for children has been an important feature of South Australian society since 1875, with legislation placing obligations on parents to ensure their children attend school. This recognises every child's right to education and the opportunities it affords.

The benefits of schooling are clear. Every day of attendance contributes to overall student achievement and there is no safe threshold for non-attendance¹. Regular non-attendance at school is associated with adverse outcomes across a person's life.

While most children attend school regularly a proportionately small, but significant number of children, do not.

Schools have various approaches to addressing non-attendance such as recording and monitoring absences, following up any unauthorised absences, meeting with parents, undertaking home visits, identifying barriers to attendance and working with families to ensure that appropriate supports are in place to help the child to attend.

The Department for Education provides additional support for intervention in cases of non-attendance, including access to social workers focused on addressing truancy as well as other programs to support the attendance of more vulnerable children.

Where the responses of the school or the department fail to address a child's non-attendance, the Act includes options for a statutory response.

This currently includes provision for the Chief Executive of the department to convene a family conference, which adopts a voluntary, family led, strengths-based approach to identifying the reasons for a child's non-attendance and develops a plan to address any barriers to attendance, bringing together a child's family, school, the department and other relevant parties.

If a school and the department have made reasonable efforts to engage with a family and address barriers to attendance, but the parents still fail to ensure their child's attendance, the department may consider prosecuting the persons responsible for the non-attendance.

The current arrangements aim to balance supportive and punitive approaches to enrolment, attendance, and participation issues. When stronger measures are needed to uphold a child's right to education, it's crucial that these measures are effective and enforceable.

The **Education and Children's Services (Enrolment and Attendance) Amendment Bill 2025** (Amendment Bill) and associated amendment regulations, propose modest but important changes to strengthen the effectiveness of the current scheme for the enforcement of compulsory enrolment, attendance and participation of South Australian children.

¹ Hancock, K. J., Shepherd, C. C. J., Lawrence, D., & Zubrick, S. R. (2013). *Student attendance and educational outcomes: Every day counts*. Report for the Department of Education, Employment and Workplace Relations, Canberra

How to provide feedback

To provide feedback:

- Go to [yoursay.sa.gov.au/addressing non-attendance](https://yoursay.sa.gov.au/addressing-non-attendance) at school 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.

A note on terms

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 (Enrolment and Attendance) Amendment Bill 2025.

Amendment Regulations means the draft Education and Children's Services (Enrolment and Attendance) Amendment Regulations 2025.

Approved learning programs include secondary education, university degrees, diplomas or awards, education provided by TAFE SA, accredited courses provided by registered training organisations, apprenticeships or traineeships.

The department means the Department for Education

Where the Amendment Bill or Amendment Regulations refers to a **person responsible for a child** this generally means a **parent** of the child, noting the Act defines *parent* to include a guardian of the child or a person standing in loco parentis to the child.

The proposed amendments

Compulsory enrolment

Current situation

A child of compulsory school age (6 to 15 years of age inclusive) must be enrolled in a school. A child of compulsory education age (16 years of age) must be enrolled in an approved learning program or a combination of approved learning programs.

If a child is not enrolled as required, each person who is responsible for the child is guilty of an offence. The offence can be prosecuted in Court and carries a maximum penalty of \$5000.

The Act does not currently make it clear that a child must be enrolled in a school appropriate to their age and year level or level of educational attainment. Once a child completes primary school, for example, it is expected they are enrolled in a high school.

With limited exceptions, it is generally expected that a South Australian child will be enrolled in a South Australian school. However, the Act does not currently specifically require enrolment in a South Australian school.

Proposed amendments

Clauses 3 and 4 of the Amendment Bill will amend sections 60 and 61 of the Act (respectively) to require a statutory warning letter to be sent to a person responsible for a child by the department before any court proceedings are commenced against them for their child not being enrolled in a school or an approved learning program.

These letters will ensure that parents are aware of their obligations around their child's schooling and have an opportunity to address any concerns.

The changes will promote natural justice and procedural fairness, giving a person formal notice of the potential for prosecution, demonstrating the seriousness of non-enrolment and providing an opportunity for the person responsible to ensure their child is enrolled.

Clause 3 of the Amendment Regulations will amend the regulations to provide that a child's enrolment in a school must be appropriate to their age and year level or level of educational attainment. This will make clear that the requirement to enrol must be met by enrolment at a school appropriate for the child. For example, a child who has completed primary school would be required to be enrolled in a high school.

Further options

The regulations could be amended to set an expiation fee (fine) for the failure to enrol a child at a school or in an approved learning program. This would provide the option for the department to issue a fine to a person rather than prosecuting the person in Court in the first instance. A person would have the option of electing to be prosecuted in Court for the offence if they wished to contest the fine.

The regulations can set expiation fees for some offences in the Act up to an amount of \$750. The maximum penalty for the offence if prosecuted in a Court is \$5000, noting a Court has discretion to determine a lesser or alternative penalty including community service.

Enabling fines to be issued in respect of a person's failure to comply with their obligations to enrol their child in a school or an approved learning program will provide the option for a timely and cost-effective way to deal with non-compliance, compared to prosecuting those matters in Court.

The Act, or the regulations, could be amended to make it a requirement that enrolment must be in a South

Australian school unless an exception applies (such as arrangements for cross-border communities) or the enrolment is otherwise approved by the Chief Executive.

What do you think?

Should the Act require a warning letter to be sent to a parent prior to the commencement of the prosecution of that person for a failure to enrol their child in a school or an approved learning program?

Do you support fines for parents who fail to enrol their child in a school or an approved learning program?

Should parents only have the option to enrol their child in a South Australian school unless an exception applies, or the enrolment has been approved by the Department for Education?

How do we best support all South Australian students to attend a South Australian school where possible?

Compulsory attendance and participation

Current situation

A child of compulsory school age must attend at the school in which they are enrolled on every day, and for such parts of every day, that instruction is provided for the child at the school. A child of compulsory education age must participate in an approved learning program in which they are enrolled on every day, and for such parts of every day, that instruction is provided in relation to the program.

If a child fails to attend school or participate in an approved learning program (as the case requires) each person responsible for the child is guilty of an offence. The offence can be prosecuted in Court and carries a maximum penalty of \$5000.

However, it is not an offence if the reason for the child's failure to attend or participate is one of the valid reasons specified in the Act and regulations and a person who is responsible for the child advises the principal of the school or the head of the approved learning program (as the case requires) within 5 days of that reason. The valid reasons are:

- the child was sick or infirm; or
- there was a danger of the child being affected by an infectious or contagious disease; or
- the failure was due to unavoidable circumstances and there was, on the occasion in question, sufficient cause; or
- in the case of a child of compulsory education age, the child was reasonably required to care for a member of the child's family

A person responsible for a child has a defence to their prosecution if they can prove they took such steps as were reasonably practicable to ensure sure that their child attended school or participated in an approved learning program as required.

Under the regulations, authorised officers are required to take all practicable action to ensure attendance at school by children of compulsory school age and participation in an approved learning program by children of compulsory education age.

Proposed amendments

Clauses 6 and 7 of the Amendment Bill will amend the Act to require a warning letter to be sent to a person responsible for a child prior to the commencement of the prosecution of that person for their child's failure to attend school or participate in an approved learning program. A warning letter would:

- provide natural justice and procedural fairness giving the person notice of the potential for prosecution
- indicate an escalation from a supportive or restorative approach to a punitive approach and demonstrate the seriousness of non-attendance
- provide a further opportunity for the person to take steps to ensure their child's attendance or participation.

Clauses 6 and 7 will also remove from the list of valid reasons for a child's failure to attend or participate, that there was a danger of the child being affected by an infectious or contagious disease. Arguably, such danger might always be present at a school or approved learning program and a child that is sick with an infectious or contagious disease would be otherwise be captured under the reason that the child is sick or infirm.

It is proposed to reduce the period within which a parent must notify a principal of a school or head of an approved learning program of their child's failure to attend or participate from 5 days to 3 days, as a school would generally follow-up non-attendance after 3 days.

Clause 4 of the Amendment Regulations will amend current regulation 25 to insert the term "reasonably", to clarify that authorised officers must take all **reasonably** practicable action to ensure attendance at school by children of compulsory school age and participation in an approved learning program by children of compulsory education age.

Further options

The Act could be amended to provide the option for the department to issue an expiation notice (fine) to a parent if they failed to take such steps as reasonably practicable to ensure their child attended school or participated in an approved learning program as required.

Enabling fines to be issued in respect of a person's failure to comply with their obligations in respect to their child's attendance or participation will provide the option for a timely and cost-effective way to deal with non-compliance, compared to prosecuting those matters in Court.

While the regulations can set expiation fees (fines) for offences against the Act up to an amount of \$750, the Act specifically precludes expiation fees for the offences related to a child's failure to attend school or participate in an approved learning program as required.

What do you think?

Should the Act require a warning letter to be sent to a parent prior to the commencement of the prosecution of that person for their child's failure to attend school or participate in an approved learning program (as the case requires)?

Do you support the removal from the list of valid reasons for a child's non-attendance or non-participation, that there is a danger of the child being affected by an infectious or contagious disease?

Is 3 days an adequate length of time for a parent to notify the school or approved learning program of their child's absence?

Do you support fines for parents if their children fail to attend school or participate in an approved learning program?

Information gathering

Current situation

The Chief Executive of the department may require a parent or other person to provide to the Chief Executive information or documents relating to their child, being information or documents in the possession of the person that is reasonably required in the administration, operation or enforcement of the Act. The Act currently notes that such information could include, for example, medical certificates or other personal information.

A person who, without reasonable excuse, refuses or fails to comply with such a requirement of the Chief Executive is guilty of an offence, with a maximum penalty of \$2500.

The Act includes provision for authorised officers, including the Chief Executive, police officers and relevant employees of the department, to *require* information from children of compulsory school or education age they observe in public at times when the children should be at school or an approved learning program. This information includes the child's name, address and age and details of the school or approved learning program. An authorised officer may also at any time attend at residential premises and *request* any person in the premises to provide the officer with the full name and age of each child of compulsory school age and compulsory education age who resides in the premises; and the school or approved learning program (if any) in which each such child is enrolled.

It is an offence to refuse or fail to answer a question of an authorised officer to the best of a person's knowledge. The maximum penalty for this offence is \$7500.

Proposed amendments

Clause 5 of the Amendment Bill will amend the Act to clarify that the information the Chief Executive of the department can require under the Act in relation to a child, where necessary for the administration, operation or enforcement of the Act, includes but is not limited to: medical certificates, reports, or advice; reports relating to the mental, emotional and social wellbeing of a child; and referrals for a medical, psychological or allied health service.

Clause 8 of the Amendment Bill will amend the Act to provide that an authorised officer, when in attendance at residential premises, can *require*, rather than request, a person in the premises to provide the officer with the full name and age of each child of compulsory school age and compulsory education age who resides in the premises; and the school or approved learning program (if any) in which each such child is enrolled.

These changes will ensure improved clarity in the types of information that can be required by the Chief Executive and consistency in the powers of an authorised officer to obtain information in carrying out their duties.

Further options

The regulations could be amended to set an expiation fee (fine) for a failure of a person to comply with a notice from the Chief Executive of the department requiring information from a parent in relation to their child's failure to be enrolled in school or an approved learning program, or to attend or participate as required. The regulations can set expiation fees for some offences in the Act up to an amount of \$750.

Enabling fines to be issued may provide a more timely and cost-effective way to deal with non-compliance, compared to prosecuting those matters in Court.

What do you think?

Should the Act clarify the types of information that the Chief Executive of the department can require in relation to a child where necessary for the administration, operation, and enforcement of the Act?

Should there be an ability to fine parents who don't comply with a reasonable request for information relevant to their child's enrolment or attendance at school in the first instance or should they be dealt with by the Court?