

16th February 2022

To the
Queensland Human Rights Commissioner

The need for inquiry into school disciplinary absences in Queensland state schools

Submission by



With support from **MinterEllison.**

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our three advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law and non-legal advocacy support with the Disability Royal Commission and the justice interface); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); and the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS). Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues. From 1 January 2022, we have been funded by the Queensland Government to establish and co-ordinate the Queensland Disability Advocacy Network (QDAN), which includes operating the Disability Advocacy Pathways Hotline, a centralized phone support for all people with disability in Queensland providing information and referral. We have also been funded to provide advocacy for young people with disability as part of the QDAN network, which we provide in addition to our non-legal education advocacy for Queensland students with disability. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

About Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submissions are informed by nearly five decades of legal practice at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

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Why do we need an inquiry?

QAI and ATSILS are deeply concerned about the extent to which some students, including students with disability and Aboriginal and Torres Strait Islander students, are receiving formal School Disciplinary Absences (SDAs) in Queensland state schools. SDAs include suspension, exclusion and the cancellation of enrolment following instances of behaviour that a school deems to be unacceptable in accordance with their *Responsible Behaviour Plan for Students*.

Despite exclusions and suspensions purportedly being ‘a last resort’ measure¹ and the growing body of evidence supporting the use of effective behaviour management strategies to address challenging behaviour, QAI and ATSILS understand the following:

1. Since 2011, the total use of SDAs in Queensland has increased;²
2. Between 2015-2018, the total number of short-term suspensions, long-term suspensions, and exclusions in Queensland state schools increased with each year. Despite the number of school enrolments also increasing, the rise in SDAs does not necessarily correspond with the increase in school enrolments. As the Department states, ‘the number of SDAs is not the number of students who received an SDA’;³
3. There is considerable variability in the use of SDAs. Whilst some schools report zero or very few SDAs, some schools have very high numbers of SDAs. Some schools with consistent enrolment numbers have also seen an increase in the use of SDAs;⁴
4. Available data does not report the escalated use of short-term suspensions (which means that the use of repeated, or rolling, short-term suspensions is not captured or transparent);
5. Children residing in out-of-home care are four times more likely to experience SDAs than children not residing in out-of-home care;⁵
6. Between 2015-2019, students identifying as Indigenous received approximately one quarter of all recorded SDAs,⁶ despite only representing 10.6% of all Queensland full-time state school enrolments in August 2020;⁷
7. The use of SDAs is much higher in secondary schools and is consistently higher for students with an EAP (Education Adjustment Program) recognised disability;⁸
8. The average use of SDAs among students with disability in Queensland has been consistently growing since 2011;⁹

¹ Department of Children, Youth Justice and Multicultural Affairs (March 2016) *Practice Resource: School Disciplinary Absence*; <https://www.cyjma.qld.gov.au/resources/childsafety/practice-manual/practice-resource-sda.pdf>

² Deloitte Access Economics (February 2017) *Review of education for students with disability in Queensland state schools*, p104

³ Department of Education and Training (August 2020), *School Disciplinary Absences by region 2015-19*; <https://qed.qld.gov.au/our-publications/reports/statistics/Documents/sda-by-region.pdf>

⁴ Department of Education and Training (August 2020), *School Disciplinary Absence by school, 2015-19*; <https://www.data.qld.gov.au/dataset/school-disciplinary-absences>

⁵ Department of Children, Youth Justice and Multicultural Affairs (March 2016) *Practice Resource: School Disciplinary Absence*; <https://www.cyjma.qld.gov.au/resources/childsafety/practice-manual/practice-resource-sda.pdf>

⁶ Department of Education and Training (August 2020), *School Disciplinary Absence by student demographics, 2015-19*, <https://qed.qld.gov.au/publications/reports/statistics/schooling/students>

⁷ Department of Education and Training (November 2020) *State school enrolments, 2016-20*; <https://qed.qld.gov.au/our-publications/reports/statistics/Documents/enrolments-summary.pdf>

⁸ Deloitte Access Economics (February 2017) *Review of education for students with disability in Queensland state schools*, p103

⁹ Ibid, p104

We know that informal exclusions can progress to longer, more formal absences. An informal exclusion may occur when a teacher phones a student's parent and requests that they take their child home. As removing a child from school fails to address the underlying issue resulting in the behaviour of concern, these informal exclusions tend to happen again. Before long, the student receives a suspension, perhaps initially short-term and then long-term, and subsequently experiences more severe suspensions and exclusions over time.¹⁰

These figures, along with statistics obtained via a *Right to Information* request outlined below, show an unjustifiable use of SDAs beyond their intended purpose as an option of last resort, with the disproportionate rates of SDAs among students with disability and Aboriginal and Torres Strait Islander students a particular cause for concern. The overuse of SDAs carries both short and long-term implications for students and their families and raises significant human rights questions.

Under the *Human Rights Act 2019* (Qld), the Department of Education (the Department) has a legal obligation to uphold every child's right to access a primary and secondary education appropriate to their needs.¹¹ However, the figures suggest limitations on this right that are neither reasonable nor demonstrably justifiable. Indeed in some instances, they indicate an outright denial of this critical human right.

While SDAs may be appropriate in very limited circumstances, they are being used more frequently than is required.¹² It might be assumed that the number of SDAs reflects the prevalence of challenging behaviour within a school, however there are numerous reasons why SDAs are used, many of which do not directly correlate to the behaviour of the student concerned.¹³ For example, SDAs may be used as a 'warning' to other students or used as a way of removing non-compliant students during inspections by accreditation authorities.¹⁴ In these situations, the limitation on a child's right to education is neither necessary nor proportionate.

The figures are not simply a reflection of student behaviour. They reflect a range of systemic issues that culminate in high numbers of school disciplinary absences, such as the inability to seek a review of a suspension of up to ten school days, and the difficulties that some students with disability experience trying to get reasonable adjustments at school.

The consequences of inappropriate and excessive recourse to SDAs are profound. Students removed from educational settings through SDAs are denied access to fundamental educational materials, learning opportunities and critical chances for relationship building and skill development. Students do not always receive work to complete at home or appropriate support to continue their education.¹⁵ They report feeling anxious, humiliated, and isolated from their peers, all of which then impacts their ability to successfully reintegrate back into school following their absence. Sometimes students are prevented from re-enrolling at a school following an exclusion. Attempts to enrol in other educational institutions can be futile due to gatekeeping practices of some school principals, leaving the student faced with either Special Education or

¹⁰ Graham et al. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. The Centre for Inclusive Education, QUT: Brisbane, QLD

¹¹ *Human Rights Act 2019* (Qld), s 36(1)

¹² Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; *International Journal of Inclusive Education*, 24:14, 1473-1493

¹³ *Ibid*

¹⁴ Parsons (2018) cited in Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; *International Journal of Inclusive Education*, 24:14, 1473-1493

¹⁵ Quin, D., & Hemphill, S. A. (2014). Students' experiences of school suspension. *Health Promotion Journal of Australia*, 25(1), 52-58.

home schooling and thus reinforcing the segregated model that inclusive education policies are seeking to overcome. This is particularly problematic for students in rural or remote parts of Queensland, where there are limited or no other schools in which to enrol.

Immediate consequences for parents can also be significant, with many reporting elevated levels of psychological distress as well as financial hardship and risks to the sustainability of their employment. This occurs due to being unable to attend work and/or being forced to take leave whilst tending to their children unexpectedly. These risks are especially high for low-income or single-parent families with limited supports.

Anecdotally, there are instances where families are forced to uproot and move to a different regional centre to find better schooling for a child who is repeatedly treated unfairly and whose education is highly disrupted by the misuse of SDAs. This can have a significant impact on a single parent who has to find alternative employment and housing in a new location in order to move the child to another school. This also impacts the siblings of the affected child who must also leave their established schooling to move to the new location and new school.

The inappropriate use of SDAs has widespread consequences and can result in a loss of more positive measures. For example, other students are taught to segregate themselves from peers who exhibit challenging behaviour, rather than show understanding, empathy, and compassion for people whose behaviour is likely trying to communicate an unmet need. The long-term impacts of SDAs can also be severe. Research has demonstrated that students who have received SDAs can go on to experience poorer mental health, prolonged unemployment, increased stigma and feelings of rejection, increased likelihood of becoming involved in crime and an increased risk of homelessness.¹⁶

QAI and ATSILS note the lack of publicly available data on SDA rates for students with disability and Aboriginal and Torres Strait Islander students with disability. Despite a recommendation that the Department collate disaggregated data on the use of SDAs for students with and without disability¹⁷, this data is not published and we are concerned that such nuances are failing to be captured by the Department in their regular reporting processes.

The lack of transparency and oversight of SDA decision-making and inadequate review and appeals processes give further cause for concern. Indeed, the manner in which SDAs are imposed without input from a student fails to take into account the best interests of the child and thus fails to afford basic procedural fairness as is required by the Convention on the Rights of the Child (CRC). The CRC states that in all actions concerning children undertaken by administrative authorities, “the best interests of the child shall be a primary consideration.”¹⁸ This standard has been adopted by the international community because children differ from adults in their physical and psychological development, and in their emotional and educational needs.

Without sophisticated data that accurately captures key demographic information, effective policies that successfully reduce the prevalence of SDAs will remain elusive. Whilst recent investment in Positive Behavioural Intervention Supports (PBIS) by the Department is welcome and may result in a decrease in overall numbers of SDAs in Queensland state schools, it alone will not address the overrepresentation of

¹⁶ Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; International Journal of Inclusive Education, 24:14, 1473-1493

¹⁷ Deloitte Access Economics (February 2017) *Review of education for students with disability in Queensland state schools*, p107

¹⁸ Convention on the Rights of the Child, Article 3

students with a background of disadvantage in those statistics.¹⁹ That is, the disproportionate rate at which some students, including students with disability and Aboriginal and Torres Strait Islander students, are receiving school disciplinary absences compared to their peers.

We need alternative, evidenced-based solutions to discipline that will successfully reduce behaviours of concern, whilst keeping students safe and engaged at school. We know that when school disciplinary absences are used sparingly alongside supportive interventions, there are better outcomes for students, families, and teachers.

QAI and ATSILS therefore call upon the Queensland Human Rights Commissioner to conduct an inquiry into the use of SDAs in Queensland state schools and to consider the disproportionate rates of SDAs given to students with disability and Aboriginal and Torres Strait Islander students.

The Human Rights Act 2019 (Qld)

Decisions to suspend, exclude and cancel the enrolment of students are made by schools using powers contained in the *Education (General Provisions) Act 2006* (Qld). Under the *Human Rights Act 2019* (Qld) (HRA) however, the Department has an obligation as a public entity to uphold every child's right to access a primary and secondary education appropriate to their needs.²⁰ This is in addition to the obligation to protect other human rights also engaged through the use of SDAs, such as the right to equality and recognition before the law²¹ and the right to protection from torture and cruel, inhuman or degrading treatment.²²

Public entities must not act or make a decision in a way that is not compatible with human rights²³, or in making a decision, fail to give proper consideration to a human right relevant to the decision.²⁴ To do so, except for in limited circumstances, renders the act or decision unlawful. To give proper consideration to a human right when making a decision, this includes (but is not limited to) identifying the human rights that may be affected by the decision²⁵ and considering whether the decision would be compatible with human rights.²⁶

Further, section 12 of the HRA clarifies that these rights are in addition to rights and freedoms included in other laws, including common law, Commonwealth laws and international laws and treaties. For example, the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) which are both relevant to the Department's obligations under the HRA and therefore its decision-making regarding the use of SDAs.

QAI and ATSILS consider that the inequitable utilisation of SDAs for students with disability and Aboriginal and Torres Strait Islander students constitutes a breach of the Department's varying legal obligations and considerations under state, Commonwealth and international law. For example, inappropriate recourse to

¹⁹ Graham, L. J., Killingly, C., Laurens, K. R., & Sweller, N. (2022). Overrepresentation of Indigenous students in school suspension, exclusion, and enrolment cancellation in Queensland: is there a case for systemic inclusive school reform?. *The Australian Educational Researcher*, 1-35.

²⁰ *Human Rights Act 2019* (Qld), s 36(1)

²¹ *Human Rights Act 2019* (Qld), s 15.

²² *Ibid*, s 17

²³ *Human Rights Act 2019* (Qld), s 58(1)(a)

²⁴ *Human Rights Act 2019* (Qld), s 58(1)(b)

²⁵ *Human Rights Act 2019* (Qld), s 58(5)(a)

²⁶ *Human Rights Act 2019* (Qld), s 58(5)(b)

SDAs in situations where alternative, less restrictive and more effective behaviour management strategies are available is arguably in breach of the *Anti-Discrimination Act 1991* (Qld) which makes it unlawful to discriminate against a person because of behaviour that is a characteristic of their impairment.²⁷ Similarly, such practices contravene the CRPD and its commitment to upholding the inherent dignity and fundamental worth of all persons with disabilities.

Despite discretionary powers for school principals to issue SDAs under the *Education (General Provisions) Act 2006* (Qld), the Department retains an obligation to ensure the exercise of this discretion does not occur in a way that unlawfully breaches human rights. Effectively monitoring the use of SDAs among vulnerable students and addressing the myriad consequences that result from their use undeniably falls within this responsibility.

Right to Information request

Through a *Right to Information* request, data was sought on the overall numbers of short-term suspensions, long-term suspensions, exclusions, and cancellations of enrolment given to the following Queensland state school students between 2016 and 2020:

- Students with disability registered with the Nationally Consistent Collection of Data on School Students with Disability (NCCD);²⁸
- Students with disability registered with the Nationally Consistent Collection of Data on School Students with Disability (NCCD) who identify as Aboriginal and/or Torres Strait Islander;
- Students with an Education Adjustment Program (EAP) verified disability;²⁹
- Students with an Education Adjustment Program (EAP) verified disability who identify as Aboriginal and/or Torres Strait Islander;
- Students in receipt of an Individual Curriculum Plan;³⁰
- Students in receipt of an Individual Curriculum Plan who identify as Aboriginal and/or Torres Strait Islander.

Concerningly, yet consistently with our organisational and anecdotal experience, the resulting data documents some alarming trends, including the following:

- Despite the number of students registered with the NCCD constituting on average, approximately 17% of all Queensland school enrolments (including government and non-government funded schools) between 2016-2020³¹, Queensland state **school students registered with the NCCD received between 46%-48% of all short-term suspensions and 41%-47% of all long-term suspensions between 2016 and 2020.**

²⁷ *Anti-Discrimination Act 1991* (Qld), s 7(h) and s 8(a)

²⁸ That is, students who have an impairment as defined under the *Disability Discrimination Act 1992* **and** where the functional impact of the student's disability results in the school actively addressing their individual education needs by providing reasonable adjustments for a minimum of 10 weeks of school education in the 12 months preceding the NCCD.

²⁹ That is, students with disability who require significant education adjustments related to the specific impairment areas of Autism Spectrum Disorder, Hearing Impairment, Intellectual Disability, Physical Impairment, Speech-Language Impairment, and Vision Impairment.

³⁰ That is, students who are identified as requiring a different year-level curriculum in some or all learning areas and/or subjects.

³¹ <https://acara.edu.au/reporting/national-report-on-schooling-in-australia/national-report-on-schooling-in-australia-data-portal/school-students-with-disability>

- The number of students with an EAP verified disability constitute on average, approximately 5.5% of all Queensland state school enrolments³². However the statistics showed that Queensland state school students with an EAP verified disability were overrepresented in school disciplinary absence statistics between 2016 and 2020:
 - Receiving between 14.6%-15% of all short-term suspensions between 2016 and 2020;
 - Receiving between 11.6%-13.7% of all long-term suspensions between 2016 and 2020;
 - Receiving between 9.4%-11.5% of all exclusions between 2016 and 2020.

Statistics were also requested with respect to the number of students who received more than one short-term suspension within a school year. The data revealed that students identifying as Aboriginal and Torres Strait Islander are disproportionately receiving more than one short-term suspension, constituting on average, 25.5% of the students receiving more than one short-term suspension, despite only constituting approximately 10% of all Queensland state school enrolments.

These statistics raise a number of questions. For example, why do SDAs continue to be used when their effectiveness at reducing ‘behaviours of concern’ is known to be poor, with damaging consequences for the students and families involved? Further, does the high number of students with disability receiving short-term suspensions reflect a lack of procedural safeguards around this particular type of school disciplinary absence? Decisions to issue a short-term suspension cannot be reviewed and there is no requirement to seek permission from the regional office when the same student receives more than one short-term suspension in any given period of time. Short-term suspensions can therefore be issued frequently and without independent oversight.

While these statistics give cause for alarm, they alone provide an incomplete picture. For example, the percentage of Queensland state school students who are registered with the NCCD *and* who identify as Aboriginal and/or Torres Strait Islander is not publicly available. Similarly, the number of Queensland state school students in receipt of an Individual Curriculum Plan, or the number of students in receipt of an Individual Curriculum Plan who identify as Aboriginal and/or Torres Strait Islander is also unknown.

The lack of nuanced data has been highlighted as problem by the Disability Royal Commission’s Chair, Ronald Sackville, who commented:

“There is limited data available to inform policy making. For example, there is limited data on suspensions and exclusions, part-time attendance of students with disability and the use of restrictive practices in schools. It is difficult to address and rectify a problem if we do not fully understand its nature and extent”³³

Students with disability

QAI and ATSILS consider that the prevalence of SDAs among students with disability typically reflects the culture of an individual school and the extent to which it values and promotes the principles of inclusive education. Whilst some schools provide exemplary support to students with disability, others appear to reject the values of inclusion and operate practices that are discriminatory towards students with disability. For

³² Data obtained from p59 from Annual report 2019-20, compared to total number of enrolments as cited above

³³ Royal Commission. (2020). Chair Closing Address - Public hearing 7, Brisbane;
<https://disability.royalcommission.gov.au/publications/chair-closing-address-public-hearing-7-brisbane>

example, unreasonably denying requests for reasonable adjustments that would ensure students with disability can access education on the same basis as others. The absence of reasonable adjustments for many students with disability, particularly students with autism and/or attention deficit hyperactivity disorder (ADHD) can lead to escalations in behaviour that would otherwise be avoided if reasonable adjustments appropriate to their needs were in place. An absence of trained staff skilled in behaviour management techniques can then lead to further escalations in the child's behaviour, resulting in disciplinary measures such as a suspension or exclusion and/or the use of restrictive practices, further entrenching the child's segregation within the school community.

This was a key finding of the 2019 South Australian inquiry into suspensions, exclusions, and expulsions, which found that exclusions were being used for students with disability who were not provided reasonable adjustments necessary to prevent incidents that then led to the use of SDAs.³⁴

Even when reasonable adjustments are provided, the allocation of resources can fail to provide what is needed for a student with a disability. Money might collectively be spent on equipment or additional teacher aide hours, however the individual support needs of the student can remain unaddressed.

All of this is occurring despite overwhelming evidence as to the ineffectiveness of SDAs in reducing behaviours of concern. Graham highlights the fundamentally flawed assumption upon which SDAs are based – that is, that challenging behaviour is a conscious choice enacted by individuals who can self-regulate their emotions.³⁵ By punishing students who exhibit challenging behaviours, it is presumed that SDAs will act as a deterrent and change the student's decision-making prior to 'choosing' their behaviour in future. However, this grossly misconstrues the nature of 'challenging behaviour', which is often a reflex communication strategy for an individual with communication difficulties in situations of heightened distress. It can also be a manifestation of a person's disability.

Case study

Andy is a young man in high school who had been permanently excluded from his school following an incident. Andy and his mother felt that the incident occurred as a result of a disruption in his daily routine and lack of preparation around the changes. These are known triggers for Andy due to his disability – intellectual impairment and Autism Spectrum Disorder. Andy's mother approached QAI's Education Advocacy Service (EAS) for assistance to appeal the exclusion decision. The EAS Advocate assisted in drafting the appeal letter and drafting a response to the Principal's subsequent reply. The Principal's decision was amended to an exclusion from the school for a period of four (4) months. Unfortunately, when the exclusion period had ended, Andy was not able to easily re-enroll at the school. Andy's mother contacted the EAS after several weeks of communicating with the Regional Case Manager about Andy's education moving forward. Approximately 23 hours of work over four weeks was required by the EAS Advocate to liaise with the Autism Hub and the Assistant Regional Director to negotiate Andy's enrollment and supports. Unfortunately, Andy was not able to be supported to return to the previous school, despite wanting to return, and at short notice was required to transition to a new high school.*

**Name has been changed to protect confidentiality*

³⁴ Graham et al. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. The Centre for Inclusive Education, QUT: Brisbane, QLD, p362 – Finding 5.1

³⁵ Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; *International Journal of Inclusive Education*, 24:14, 1473-1493

Aboriginal and Torres Strait Islander Students

Despite limited publicly available data on the use of SDAs in Queensland state schools, statistics released by the Department of Education consistently show that students identifying as Aboriginal and/or Torres Strait Islander, irrespective of whether they identify as having a disability, are overrepresented in school disciplinary absence statistics.³⁶ While constituting approximately only 10% of all Queensland state school enrolments, Aboriginal and Torres Strait Islander students received between:

- 23%-25% of all short-term suspensions between 2016 and 2020;
- 25%-27.3% of all long-term suspensions between 2016 and 2020;
- 23%-30% of all exclusions between 2016 and 2020;
- 21.6%-30% of all cancelled enrolments between 2016 and 2020.

Publicly available data also shows that suspension rates increased between 2013-2019 and that the rate of increase was significantly faster for Indigenous students. These statistics echo similar findings from recent research published by QUT's *Centre for Inclusive Education (C4IE)*, which found that Indigenous students in Queensland have a one-in-three chance of being suspended, receiving 350.8 suspensions per 1000 compared to 110.9 suspensions per 1000 for non-Indigenous students, although it is probable that some of these incidents reflect repeated suspensions for the same students.³⁷ The research also found that suspensions peaked for Indigenous students in year 8, whilst suspensions peaked in year 9 for non-Indigenous students. A possible explanation for this could be that Indigenous students who receive SDAs are likely to have been permanently excluded from formal education by the time they reach year 9, compared to their non-Indigenous counterparts who remain in school.

A number of Aboriginal and Torres Strait Islander students also have a disability however, intersectional disadvantage often goes unrecognised for Aboriginal and Torres Strait Islander students. For example, an Aboriginal student may have a developmental language disorder but it remains undiagnosed for many years because English is a second or third language.

Similarly, the unique and complex learning needs of children with fetal alcohol spectrum disorder (FASD) also tend to be under recognised. Whilst there is a lack of data on the prevalence of FASD across Australia, some studies have shown very high levels of FASD in some communities³⁸ and yet the Department of Education does not currently record whether a student has a diagnosis of FASD. A lack of appropriate support for students with FASD is likely to lead to behaviour that results in the use of SDAs. Without knowing the true prevalence of FASD in Queensland state schools, how can the Department ensure tailored, evidenced-based interventions are provided to students who need it the most?

The intersectional disadvantage experienced by Aboriginal and Torres Strait Islander students with disability who live in residential care should also be recognised. The additional challenges facing these students, such as the intergenerational impacts of colonisation and the ramifications of an unstable home environment,

³⁶ School disciplinary absences by student demographics, <https://qed.qld.gov.au/publications/reports/statistics/schooling/students>

³⁷ Graham, L., Killingly, C., Laurens, K. R., & Sweller, N. (2021). Suspensions and expulsions could set our most vulnerable kids on a path to school drop-out, drug use and crime. *The Conversation*.

³⁸ E.g. Fitzpatrick JP, Latimer J, Olson HC et al. Prevalence and profile of neurodevelopment and fetal alcohol Spectrum disorder (FASD) amongst Australian aboriginal children living in remote communities. *Res Dev Disabil* 2017;65:114–26.

must be understood. This is particularly vital given the now well-established link between educational outcomes and success in later life, with education being ‘one of the most powerful tools by which economically and socially marginalised children and adults can lift themselves out of poverty and participate fully in society.’³⁹

Considered collectively, the data available suggests that students with backgrounds of disadvantage, be it in relation to their disability status, cultural heritage, or involvement with the child protection system, are disproportionately receiving school disciplinary absences in Queensland state schools. That is, they are being suspended, excluded, and removed from educational settings at inequitable rates compared to their peers.

Appeals and review processes

QAI and ATSILS are also aware of inconsistencies and inadequacies with the Department’s current review and appeals processes regarding decisions to suspend, exclude or cancel a student’s enrolment. For example, short-term suspensions (suspensions of up to 10 school days) are unable to be reviewed or appealed at all, with the only review option a complaint utilising the Department’s Customer Complaints Process.⁴⁰ There is no avenue of external appeal from the decision in response to the complaint. This lack of administrative oversight applies even if a school gives repeated short-term suspensions to the same student. QAI supported one student who was suspended more than eight times in a year, for up to ten days per suspension. Short-term suspensions can only be the subject of a complaint. In QAI’s experience, complaints are often met with lengthy delays and a reluctance to engage directly with students and their parents to resolve the matter. There are also concerns about the independence of the internal complaints process, with complaints having been referred by the Regional Office back to the original decision-maker for determination in practice, rather than to an independent decision-maker, despite this not being permitted by the legislation.⁴¹

Further, an internal review of a long-term suspension or exclusion decision can take up to 40 school days to complete,⁴² during which time the student may not be accessing any education.⁴³ Permanent exclusions can be reviewed initially and then annually,⁴⁴ yet a refusal-to-enrol decision can be reviewed externally by Queensland’s Civil and Administrative Tribunal (QCAT) following an unsatisfactory internal review and the issuance of a ‘RTE-11:Notice - Outcome of a review of a decision re refusal to enrol’.⁴⁵ There is a right to external review at QCAT for a ‘review of the review decision’,⁴⁶ or from a decision to exclude a student from all state schools.⁴⁷ However this right is not acknowledged or referenced in any other resource provided by the Department in relation to review and appeals processes, which instead cite the Queensland Human Rights

³⁹ United Nations Educational, Scientific and Cultural Organisation; ‘Right to education’; <https://en.unesco.org/themes/right-to-education>

⁴⁰ *Education (General Provisions) Act 2006* (Qld), ss 281, 283; Department of Education (January 2021); <https://behaviour.education.qld.gov.au/procedures-guidelines-and-forms/disciplinary-consequences/appeals>

⁴¹ *Education (General Provisions) Act 2006* (Qld), s 313, 392.

⁴² *Education (General Provisions) Act 2006* (Qld) ss 313, 392; Department of Education (January 2021); <https://behaviour.education.qld.gov.au/procedures-guidelines-and-forms/disciplinary-consequences/appeals>.

⁴³ This is what QAI has observed in practice, even in circumstances where a student is suspended pending a decision about exclusion – see s 301 *Education (General Provisions) Act 2006* (Qld).

⁴⁴ *Education (General Provisions) Act 2006* (Qld), ss 312, 315; Department of Education (January 2021); <https://behaviour.education.qld.gov.au/procedures-guidelines-and-forms/disciplinary-consequences/appeals>

⁴⁵ Department of Education; <https://behaviour.education.qld.gov.au/procedures-guidelines-forms/disciplinary-consequences/Documents/reviews-against-refusal-of-enrolment-decision.pdf>

⁴⁶ *Education (General Provisions) Act 2006* (Qld), s 394.

⁴⁷ *Education (General Provisions) Act 2006* (Qld), s 402.

Commission and Queensland Ombudsman as the appropriate external bodies to review unsatisfactory internal review decisions. This is concerning as many parents and students will not have obtained or have access to legal advice and will therefore not be aware of this right to external review.

Lengthy, complex, and cumbersome review processes exacerbate the harm caused by the disproportionate use of SDAs on students with backgrounds of disadvantage. Such practices raise concern regarding due process and the transparency and accountability of decision-making within the Department. They bring into question key issues of procedural fairness which must remain at the very core of government decision-making. The subsequent anguish felt by students and their parents leads to mounting frustration, communication breakdown and can irreparably damage vital partnerships between students, parents, and schools.

Case study

Belinda is a primary school student with ASD Level 3, ADHD, language disorder and significant sensory processing issues who was permanently excluded from her school following repeat suspensions (six in total), commencing when she was eight (8) years old. Belinda was thriving in a mainstream school with support from the Special Education Unit, until a change of key staff in that Unit significantly altered the inclusivity of the school, and her educational experience. While Belinda had been accustomed to an inclusive and disability-aware schooling environment, the new Head of Special Education failed to provide reasonable adjustments in circumstances that led to an escalation of behaviour. This ultimately led to disciplinary action by the School, including six (6) suspensions, the application of Restrictive Practices (Belinda was locked in a sensory room on several occasions and placed in a segregated space during school hours). Following her exclusion, Belinda experienced a sustained period where she received no educational materials or support, which her mother sought to enrol her in another school. Belinda attended a total of 38 days of school in the 2020 school year.*

**Name has been changed to protect confidentiality*

Legislative and policy context

Legislative changes introduced in 2014 have had a lasting effect on the use of SDAs on disadvantaged students in Queensland. Amendments in the *Education (Strengthening Discipline in State Schools) Amendment Act 2013* (Qld) dramatically increased the discretionary powers of school principals with regards to SDAs and extended the length of short-term (and therefore non-reviewable) suspensions from 5 to 10 days. This purportedly happened at the request of school principals yet occurred despite a reported decline in the use of suspensions in the three-year period immediately preceding it.⁴⁸ Despite intentions that increasing the discretionary power of principals responding to behaviours of concern would result in a *reduction* in the number of SDAs, the available evidence suggests that the opposite has occurred.⁴⁹

Increased discretionary power of school principals and the subsequent inconsistencies in their decision-making has made it extremely difficult for students and their families to know what to expect. This is exacerbated further by inconsistencies in the approaches taken by regional offices throughout Queensland

⁴⁸ Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; International Journal of Inclusive Education, 24:14, 1473-1493

⁴⁹ Ibid, p1480

with respect to the level of support provided (or lack thereof) to students who have been excluded or suspended from school. For example, some regional offices provide case management support to students who have had their enrolment cancelled, whereas others do not. Students in these districts can become lost in the system without anyone supporting them to enrol in an alternative school. For students with disability, this can be an almost impossible task due to gatekeeping practices of some school principals and the prejudicial content of incident reports on One School.

Whilst the *Human Rights Act 2019* (Qld) provides an important legislative safeguard, it does not apply to private schools and its complaints process can be challenging for people to navigate. Additional legislative protections are therefore required to ensure vulnerable students do not continue to disproportionately receive SDAs. For example, complaints about the conduct of Departmental staff should be heard and managed by an independent body. Students with disability who receive an SDA should be routinely referred to an individual advocate and processes should afford the student opportunity to explain what has occurred. Further, an integration plan must be established following an SDA. Administrative safeguards prior to the issuance of an SDA are also necessary. For example, in South Australia, authorisation from the Chief Executive is required if a student is suspended more than four times within a school year.⁵⁰ Adoption of similar safeguards in Queensland would provide increased accountability for decisions that ultimately have a significant impact on the trajectories of students and their educational outcomes.

Education is fundamentally about socialising students and preparing them for adult life. It teaches essential skills and facilitates pathways to employment and the realisation of a meaningful life. However, for some students, it is the beginning of the 'school-to-prison pipeline', where marginalised and excluded young people are at greater risk of incarceration.⁵¹ The association between SDAs and antisocial behaviour resulting in prison sentences is well established, both in Australia and overseas. The lack of supervision that occurs following an SDA increases the likelihood of students engaging in criminal activity and therefore coming into contact with the criminal justice system.⁵² This is particularly concerning for students with disability and Aboriginal and Torres Strait Islander students, given the overrepresentation of both people with disability and First Nations Australians in Queensland's correctional facilities. The long-term costs can be very high. For individual students, they can become alienated from school and engage in behaviours that become 'an entrenched lifestyle'.⁵³ For society, there are repercussions for community safety and a need for increased expenditure on an ever-growing prison population.

The political context in which decisions to issue SDAs to students must also be considered. The role played by the teacher's union and increasing pressure felt by principals to be seen as 'tough' in responding to challenging behaviour must be acknowledged if meaningful policy change is to occur. However, while teachers can rely on the union to advocate for their rights, students who unfairly and disproportionately receive SDAs without any administrative oversight or accountability do not have a comparable union to speak on their behalf.

It should be noted that all of this is occurring at an unprecedented time in Australian history where the experiences of students with disabilities and their vulnerability to abuse, neglect and exploitation are under

⁵⁰ s. 76(3) of the *Education and Children's Services Act 2019* (SA)

⁵¹ Australian Institute of Criminology (2017) Trends and issues in crime and criminal justice; <https://www.aic.gov.au/sites/default/files/2020-05/tandi531.pdf>

⁵² Hemphill S, Broderick D & Heerde J 2017. Positive associations between school suspension and student problem behaviour: Recent Australian findings. *Trends & issues in crime and criminal justice* no. 531. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi531>

⁵³ Ibid

intense scrutiny by the Disability Royal Commission. The Submissions of Counsel Assisting following Public Hearing 7 on the 'Barriers to a safe, quality and inclusive school education' recommended:

"Education Queensland...review and amend their disciplinary procedure documents to ensure that they provide express direction and guidance about how to ensure compliance with the Disability Discrimination Act 1992 (Cth) and the Disability Standards for Education".⁵⁴

And suggested that,

"The Royal Commission can find that, processes for re-enrolling children after expulsion in Queensland do not encourage immediate re-engagement, can be ineffective in overcoming reluctance from a school to accept an enrolment and are not addressed in a specific policy or procedure."⁵⁵

Whilst the Department's inclusive education policies increasingly reference human rights principles and an intention to ensure students with disabilities access an education on an equal basis with others, there continues to be a gap between policy and practice that must urgently be addressed.

This is even more critical as students continue to endure additional barriers to education that have arisen due to the Covid-19 pandemic. While the pandemic has perhaps levelled some access issues, particularly for students with learning or communication barriers who are assisted by and have access to technology, in other ways the pandemic has exacerbated existing challenges. The rapidly evolving nature of the pandemic has resulted in the introduction of measures not yet tested against discrimination standards. For many students experiencing intersectional disadvantage, access issues have been exacerbated due to poverty, limiting their educational opportunities and contributing to cumulative disadvantage, with the result that more children with disability and Aboriginal and Torres Strait Islander children are being left behind. Rapid change coupled with increased anxiety and restrictions have been problematic for many students and have resulted in punitive responses by some educational institutions. Students who were excluded from school immediately prior to lockdown periods have also faced additional challenges accessing alternative educational options in a remote learning environment.

What about other states and territories?

The disproportionate use of SDAs for students from backgrounds of disadvantage is also a problem in other Australian jurisdictions, though there is disparity regarding the extent to which it is acknowledged and therefore how, if at all, it is being addressed.

We conducted a review of the available school disciplinary absence statistics in Australian jurisdictions other than Queensland for comparison, however we were unable to obtain sufficient data to provide a comprehensive summary. School disciplinary absence statistics appear to only be publicly available in the Australian Capital Territory, New South Wales, the Northern Territory, and South Australia. Of these jurisdictions, the only jurisdiction to provide some demographic information is New South Wales. However, the information is limited to schools in the state system. The other three jurisdictions do not include demographic information in their statistics. Victoria publishes expulsion statistics only. These statistics are

⁵⁴ Submissions of Counsel Assisting following Public hearing 7 – Barriers to a safe, quality and inclusive school education, p103

⁵⁵ Ibid, p101

available from 2018 to 2020 and include some demographic information. Tasmania and Western Australia do not appear to publicly report any school disciplinary absence statistics at all.

New South Wales

In New South Wales, advocacy groups have been concerned for some time regarding the overrepresentation of students with disability and Aboriginal and Torres Strait Islander students in school disciplinary absence statistics. During the Budget Estimates 2020-2021 hearing for Education and Early Childhood Learning, questions regarding suspensions and exclusions of students with disability and First Nations students were taken on notice. The supplementary answers showed that in 2020, from a total of 63,604 suspensions, 32,608 were given to students with disability⁵⁶ and 18,465 were given to Aboriginal students.⁵⁷ In terms of the number of students suspended, 32,576 students with disability attending mainstream schools were suspended in 2020.

When asked about the Department's response to the concern regarding the disproportionate exclusion of vulnerable children in New South Wales state schools, the New South Wales Department of Education cited their commitment to their partnership with the NSW Aboriginal Education Consultative Group and their new Student Behaviour Strategy, released in March 2021.⁵⁸

The new Student Behaviour Strategy is reportedly based upon evidence presented from independent reviews, data analysis and stakeholder engagement over a three-year period. It has a greater emphasis on prevention and early intervention and includes behaviour support resources such as new behaviour specialist positions in schools. It is too early to determine the success of this strategy, but it is a welcome change in direction and is in stark contrast to the 'zero tolerance' approach to anti-social behaviour cited by Queensland's Minister for Education, Grace Grace.⁵⁹

South Australia

In 2019, the South Australian government established an inquiry into whether their Department for Education was complying with international conventions, legislative requirements, and departmental policies in its use of suspensions, exclusions and expulsions.⁶⁰ The terms of reference included a focus on whether vulnerable students were overrepresented in suspension, exclusion and expulsion numbers and whether the department was effectively addressing such issues.⁶¹ The inquiry found many disturbing trends. For example, the majority of suspensions in 2019, 71.3%, went to students who were suspended two or more times.⁶² Of the 42 students who received ten or more suspensions in 2019, 88% of these students were students with a disability.⁶³ Two in three suspensions went to Indigenous students with a disability.⁶⁴ And perhaps most alarmingly, only one

⁵⁶ Budget Estimates 2020-2021 Questions taken on notice during the hearing; Education and Early Childhood Learning, p75

⁵⁷ Ibid, p77

⁵⁸ Budget Estimates 2020-2021 Supplementary Questions; Education and Early Childhood Learning, p16

⁵⁹ <https://www.brisbanetimes.com.au/politics/queensland/school-suspensions-expulsions-jump-12-per-cent-but-minister-says-that-s-good-20190503-p51jy4.html>

⁶⁰ Graham et al. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. The Centre for Inclusive Education, QUT: Brisbane, QLD

⁶¹ Ibid, p9

⁶² Graham et al. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. The Centre for Inclusive Education, QUT: Brisbane, QLD, p268

⁶³ Ibid, p278

⁶⁴ Ibid

in every ten school disciplinary absence was issued to a student who was *not* Indigenous, a student with disability, a student in residential care or a student experiencing relatively high levels of socioeconomic disadvantage.⁶⁵

Since the inquiry, the Minister for Education in South Australia has announced an increase in government funding "to support the development and implementation of a systemic strategy to drive a significant reduction in exclusionary discipline in South Australia's public schools and provide increased access to accountability".⁶⁶ As recommended in the Inquiry report, the government will implement new data dashboards to enable system monitoring and will "set reduction targets to stop the use of suspensions for minor reasons, such as not following instructions, minor physical acts and talking in class. Both Flexible Learning Options (FLOs) and exclusions will be abolished, communication to parents and students about their rights will be improved, and complaints and appeals processes strengthened".⁶⁷

The new approach will include "changes to policy to minimise, as far as possible, the use of exclusionary discipline for all children, and especially for Aboriginal children and young people and students with a disability". The Minister has advised that a draft strategic roadmap with targets for reform would be released for consultation in early 2022, however details of this are yet to be released. Further, there is yet to be any legislative reform as a result of the inquiry, despite many of the report's recommendations pertaining to this.

What needs to happen

High numbers of SDAs in Queensland state schools could suggest a lack of reasonable adjustments and/or inadequate behaviour management strategies. It is imperative that schools can successfully support appropriate student behaviour whilst upholding the human rights of their students and fulfilling their legal obligations, including obligations to provide a safe working environment for staff. The 2017 Deloitte review into Queensland education found that effective behaviour management would reduce the incidence of SDAs and restrictive practices, and that schools needed to understand '*...when difficult behaviour may be a manifestation of a child's impairment that may be altered through environmental adjustments*'.⁶⁸ Yet levels of SDAs remain high in Queensland state schools and continue to disproportionately impede the education of many students with disability and Aboriginal and Torres Strait Islander students.

We need alternative solutions to SDAs that effectively address behaviours of concerns whilst keeping students engaged in the education system. We need to change our language around discipline, by ceasing to 'punish' students and 'supporting' them instead. We need holistic, evidenced-based supports that successfully address challenging behaviours whilst ensuring student safety, both physically and mentally.

There are better alternatives that are more consistent with the observance of the human rights of Queensland school students. The overuse of a punitive approach instead of a greater use of more supportive models is neither necessary nor proportionate. The lack of oversight of such practices and the absence of detailed data further suggests a failure to properly consider and adhere to the rights of the child.

⁶⁵ Ibid p 375

⁶⁶ South Australia, *Parliamentary Debates*, House of Assembly, 30 March 2021, 4796.

⁶⁷ Graham, L. J., Killingly, C., Laurens, K. R., & Sweller, N. (2022). Overrepresentation of Indigenous students in school suspension, exclusion, and enrolment cancellation in Queensland: is there a case for systemic inclusive school reform?. *The Australian Educational Researcher*, 1-35; p7

⁶⁸ Deloitte Access Economics (February 2017) *Review of education for students with disability in Queensland state schools*, p106

QAI and ATSILS therefore bring this matter to the attention of the Queensland Human Rights Commissioner and urge the Commission to utilise its investigatory powers to shine a light on the alarmingly high levels of school disciplinary absences issued to students enrolled at Queensland state schools, as well as the complex and convoluted review and appeal mechanisms in place. We need to understand why students with disability and Aboriginal and Torres Strait Islander students are being disproportionately excluded from schools and realise the broader implications of these practices. This is vital if Queensland is to successfully ensure that *all* students have access to an education that meets their needs and that certain students are not unfairly and disproportionately disadvantaged in the realisation of this most fundamental of human rights.

Suggested focus for inquiry

We therefore recommend the following as a suggested focus for an inquiry:

Consider whether the Department of Education is complying with international conventions, legislative requirements, and departmental directives in its use of suspensions, exclusions, and cancelled enrolments and whether its practices lead to the disproportionate use of SDAs on students with disability and Aboriginal and Torres Strait Islander students.

This should include consideration of the following:

- Whether the Department is taking sufficient action to protect the human rights of all students, including whether its Positive Behaviour Intervention Supports (PBIS) is sufficient to address the disproportionate rate at which students with disability and Aboriginal and Torres Strait Islander students receive SDAs;
- Whether current levels of record keeping are adequate to inform decision-making so that decision-making occurs in a way that is compatible with human rights. For example, does the Department's record keeping identify the prevalence of school disciplinary absences and their impacts on different cohorts of students, including students with disability and Aboriginal and Torres Strait Islander students;
- Whether students receive adequate support following a school disciplinary absence, such as appropriate educational materials, behavioural support, and assistance to return to school or enrol in an alternative school;
- Whether students and their families have access to an effective, accessible, and independent appeals and review process;
- Whether there are adequate safeguards that avoid inappropriate recourse to school disciplinary absences and which ensure procedural fairness in decision-making that can adversely impact on human rights, including a right of explanation for the affected student;
- Whether legislative amendments are required to ensure natural justice, such as those which would avoid the use of rolling and repeated short-term suspensions;

The Inquiry could also examine some of the broader implications of school disciplinary absences. For example, the economic costs of poor mental health, reduced employment of parents and the increased burden on the criminal justice system that occur as a result of SDAs. Consideration could also be given to the Department's Aboriginal and Torres Strait Islander Strategy and whether monitoring and reducing the use of exclusionary discipline for these students is of sufficient prominence in the Strategy for it to achieve its goal. Further, given

the intersectionalities between Indigenous status, disability, and out-of-home care, the Inquiry should consider whether the Department’s structures, strategies, policies, and procedures obscure important relationships by siloing these issues and potentially preventing the development of holistic solutions. The Terms of Reference guiding previous Inquiries, such as the most recent one in South Australia, could helpfully inform the development of the Terms of Reference for an Inquiry in Queensland.

Conclusion

In the words of Professor Graham, Director of QUT’s Centre for Inclusive Education:

*“Taken together, the bulk of the research evidence indicates that suspension does not help to address the reasons for student disengagement and may in fact accelerate vulnerable students’ disconnection from school”.*⁶⁹

Queensland Advocacy Incorporated and the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd call upon the Queensland Human Rights Commissioner to conduct an inquiry into the use of suspensions, exclusions and cancelled enrolments in Queensland state schools and to review the disproportionate rates of school disciplinary absences for students with disability and Aboriginal and Torres Strait Islander students.

Endorsements



⁶⁹ Graham, L. (2020) *Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms; a Queensland case study*; International Journal of Inclusive Education, 24:14, 1473-1493

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