



15th October 2018

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Hon John Gardner
Minister for Education
Level 9
31 Flinders Street
Adelaide, SA 5000

cc: Dr Susan Close MP
Hon Tammy Franks MLC

Re: Education and Children Services Bill 2018

Dear Minister

As South Australia's Commissioner for Children and Young People my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (the Act) is to advocate for the rights, interests and wellbeing of all children and young people in South Australia. It is also my role to ensure that the State, at all levels of government satisfies its international obligations under the Convention on the Rights of the Child (CRC). Under this Act each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out in the CRC.

I am writing to update my position on the Education and Children's Services Bill. Since my previous correspondence I have had many conversations about bullying with multiple stakeholders. Through these I have been made aware that it is intended this Bill be used as a tool to address bullying, mainly through the use of suspensions, expulsions and exclusions. This has prompted me to provide additional feedback and recommendations.

My concern with this Bill is that children's fundamental rights will be overlooked to address behavioural issues through measures to "teach children lessons". The literature has shown that excluding children.¹ Children who are excluded from education by any of the above-mentioned methods are less likely to do well at school, are more disengaged and are more likely to leave school earlier. Children who are already doing it tough and marginalised are more likely to be targeted with these types of interventions.

Article 29 of the CRC states that education should develop the child's personality, talents and mental and physical abilities to their fullest potential, State parties have a duty to develop children's and young people's respect for the human rights and fundamental freedoms enshrined in the Charter of the United

¹ Osher D, Bear G, Sprague J et al, *How Can We Improve School Discipline?*, Educational Researcher Vol 31 at 48, 1 January 2010 and revised 23 June 2009.

Nations. This is reaffirmed in the UN Declaration on Human Rights Education and Training.² The State also has a duty to develop children's respect for themselves, the environment and other people. I believe using suspensions, exclusions and expulsions as tools to address bullying behaviour will not achieve these ends.

Children and young people want interventions earlier to prevent bullying and other behaviours that lead students to disengage. They want programs that empower them and their peers. Schools that practice a rights-based approach to teaching have made in-roads in addressing bullying. This case study from Wales provides an alternative approach worth considering:

- Case study: In a rights-based primary school in Wales (in a low socio-economic area, where over 55% of students require free meals), student wellbeing has been assessed by the independent inspectorate as "excellent". This school has used human rights principles to form many programs, including an anti-bullying program, where pupils are "having a say and taking personal responsibility" for their actions. This school has anti-bullying ambassadors who are students. They have developed their own anti-bullying policy and shared it with other students, and then each class has agreed to their own class charter. The independent inspectorate has stated that "as a result, behaviour is very good in lessons and around school. Most pupils show great care and kindness towards others and are courteous and polite."³

These approaches demonstrate that early interventions can result in kinder, safer schools; however it requires a commitment by leaders, Principals and teachers to implement these programs, listen to their students and respect their voice. If your office has any queries or comments please do not hesitate to contact me.

Yours sincerely



Helen Connolly
Commissioner for Children and Young People



² *United Nations Declaration on Human Rights Education and Training* (2011), Adopted by the General Assembly, Resolution 66/137. A/RES/66/137, 19 December 2011 accessed on 12 October 2018, [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/UnitedNationsDeclarationonHumanRightsEducationandTraining\(2011\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/UnitedNationsDeclarationonHumanRightsEducationandTraining(2011).aspx).

³ Her Majesty's Inspectorate for Education and Training in Wales, *A report on Blaenymaes Primary School – Date of Inspection: November 2016* at pages 6-7 accessed 11 October 2018, <https://www.estyn.gov.wales/sites/default/files/documents/Blaenymaes%20Primary%20School.pdf>.

Feedback on the Education and Services Bill 2018

Principals include the Convention on the Rights of the Child (CRC) under s 7 of the Bill

The Bill does not integrate the UN Convention on the Rights of the Child, which protects fundamental rights of children and young people, including the right to be heard and listened to (Articles 12 and 13), the right to be treated equally (Article 2) and the role education plays in a child and young person's development (Articles 28 and 29).

It is recommended that section 7 include a provision that gives effect to the United Nations Convention on the Rights of the Child. This includes that authorities and schools "in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the UN CRC and any other relevant international human rights instruments affecting children and young people".

Family conferencing (subdivision 2) be used as a tool to support parents and children to better engage with school, not just for truancy cases

Family Conferencing only being used address truancy is narrow and limiting and may give children and their family the impression that it is only used after things have gone "off the tracks". Further, family conferencing can only be initiated by the Chief Executive. This may give the impression that the conference is a punitive measure and taken the wrong way may result in a breakdown in the relationship between adults, the child and the school. Therefore, children and families should also have the power to initiate a family conference.

Family conferencing should be just one element of a complete package of support and should be offered as a problem solving exercise or as a restorative practice for anything that is adversely affecting students. There should be the option for children and families to initiate a family conference to address concerns before the child starts disengaging. For many families who are struggling day to day, they need to feel supported, encouraged and motivated to support their children to attend school. A more holistic approach to family conferencing may be a positive way to support a child before they become fully disengaged.

That children have the right to and advocate when attending Family Conferencing if they choose (section 71)

I note that when children are required to undertake a family conference that they are allowed a support person, but this person can only be included if **in the opinion of the coordinator, [they] would be of assistance in that role**. Potentially, this could mean that the coordinator could disallow any support person for that child.

This appears to be discriminatory as it is not in accordance with procedural fairness and appears to discriminate this cohort on the grounds of their age. If adults in their workplace, for example, are required to go to a conference to address disciplinary measures they are automatically allowed an advocate. But there appears to be a different measure for children and young people even though they are the most vulnerable in society and require stronger protections.

That suspension, exclusions and expulsions are used as a last resort

I note that suspensions, exclusions and expulsions guidance has been moved from the current regulations into the Bill. I understand that this ensures better governance and scaffolding for schools and limits how long someone can be suspended, excluded and when they can be expelled. However, in its current form I can envisage that these "actions" will empower Principals to go down this route more often.

Therefore I would ask that a number of principles be inserted into Division 3 of the Bill to ensure that children and young people's fundamental rights under the CRC are protected. This should be inserted at the beginning of the Division 3 and include:

- a. The use of suspending, excluding or expelling a student is used as a last resort after all other avenues have been explored and acted upon and these other actions are recorded.
- b. Article 28 of the UN Convention on the Rights of the Child states that education for primary school aged children is compulsory and that all education is accessible to every child or young person, therefore suspending or excluding this cohort of children should not be permitted under law.
- c. That when suspending, excluding or expelling students the Principal must ensure that this action is appropriate to their behaviour and the child's background and circumstances.
- d. That the child has the right to be heard and due process is given.
- e. That alternative education be provided, which is not prohibitive on the child or family. This includes the Principal ensuring that the child is safe (if left at home), whether the parents will have to take time off work and other considerations which may result in hardship.

To make a provision to include an independent appeal mechanism for children that have been expelled, excluded or suspended

The Bill should include a provision for appeals in relation to suspension, expulsion and exclusion to an independent body. This could be by expanding the powers of some existing bodies, including the Ombudsman of SACAT or creating an entirely new body. As countless commissions and inquiries into a vast range of institutions, governments and companies has shown, access to independent mechanisms of review and monitoring and access to "thought" diversity in institutions is a critical way of improving governance arrangements, and reduces opportunities for abuse of power.