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Re: The Draft Education and Child Services Regulations

Dear Joanna,

I am writing to provide some feedback on the draft regulations (Regulations) that will support the *Education and Children's Services Act 2019* (the Act). Firstly, I would like to congratulate the Department on the passing of the Act, which is a step in the right direction in modernising schooling, recognising some of the inherent rights children have and including the voices of children, students, parents, carers and the wider community in education.

The new Act has been described by both sides of government as “providing a contemporary framework for the delivery of high-quality children's services and compulsory education in this state.”¹ As the Hon. J. Gardner has made clear, the new Act embeds “various principles that must be taken into account in relation to the operation, administration and enforcement of the bill. Most notably, the bill provides that the best interests of children and students are the paramount consideration.”² Further, the voice of children and students (and their caregivers) must be heard in decisions pertaining to the Act (the Principles).

¹ Hansard, Rob Lucas MP, dated

<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-24938>

² Hansard, Gardner J, dated

<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-11-34874>

It is pleasing to see that these provisions reinforce the rights contained in the United Nations Convention on the Rights of the Child (UNCRC). These rights include the right to an education (Article 28), that education should develop each child's personality and talents to the full (Article 29) and that children should have a say in the decisions that affect their lives (Article 12).

The Act also reinforces other legislative requirements that all State parties, including the Department for Education, should seek to comply with, including the Convention on the Rights of the Child, Section 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (OAB Act), and other relevant international Instruments. It also reinforces the government's promise under the *Children and Young People (Safety) Act 2017* (Safety Act) to provide all children to be safe from harm; to do well at all levels of learning and to have skills for life; and to be active citizens who have a voice and influence. The Safety Act also makes a promise to protect the wellbeing of children, particularly those at risk.³

That is why I find much of the content of these draft Regulations surprising. Much of the content – especially as it relates to children at schools – is a copy and paste from the old Regulations. It is concerning that the draft Regulations do not embed the rights-based Principles that were initially considered necessary in the “operation, administration and enforcement of the Bill”. Further, the wording of the Regulations in relation to school suspensions and exclusions appears to be a step backwards rather than a step towards modernising or improving how to work with children who are at the risk of being excluded. This is especially concerning in light of the research and evidence that shows the punitive approaches simply do not work.⁴

Often it seems that children's services are created and shaped from an adult perspective, based on what adults think is “the best for children”. There appears to be an assumption among many adults that children don't want to go to school and that they do not understand how important an education is for their future. However, this is far from the truth. I have now spoken to thousands of children and young people about education and the overwhelming majority value their education and how it shapes their future.

“Having an education – so I can learn things – and so we can get jobs.”
Student, Navigator College

“Education. Makes you grow as a person. Determines my future. Broadens knowledge.”
Student, Paralowie R-12 School

³ Section 4(2) of the *Children and Young People (Safety) Act 2017* as well as the Section 9, “Without limiting a provision of this or any other Act or law, State authorities whose functions and powers include matters relating to the safety and welfare of children and young people must have regard to the fact that early intervention in matters where children and young people may be at risk is a priority.”

⁴ Please see submissions from the University of South Australia and the Guardian for Children and Young People.

"In the school students fill (Feel) safe. In the school teacher give us good knowledge. Social activites (Activities) in the school we much study hird (Hard). Meet a new friend and meak (Make) us happy. At school to make us fell (Feel) at home."

Student, Australian Migrant Resource Centre

However, children and young people also say that school as an institution is now outdated, does not consider the student as a whole person and is more like a factory trying to produce good NAPLAN results, rather than a service for children. Constant testing and homework seems to be prioritised over providing children with the skills they need for life. Nor do schools, as an institution, appear to acknowledge and respect each child as unique.

"Less homework- scientifically proven that students learn better the less homework they have."

Student, Family Law Group

"There should be less homework we have to much home work and we should have term assignments. We all stress to much and get no sleep then get into trouble for not doing it. Clearly homework is not working We (South Australia) have the lowest NAPLAN result. We get to much of one thing. Some things we learn we get every week. Instead we should do those things once a month so we can still remembe (Remember) it and we can learn more of the other stuff." 11 year old student, Scotch College

Children I have spoken to want school to give them the tools to prepare them for life and teach them more than just reading, writing, science and maths. They want to know about culture, politics, civics and how to be resilient, kind and strong.

"Don't learn anything (about Australian Culture) from school, they teach you whatever you can write in a book, don't teach you what pathway is for you, or if depressed how to get up in life."

Year 11 Student, Multicultural Youth SA

For children to be prepared for life means that children should have a meaningful voice in how their education is shaped and delivered. This is consistent with the Principles in the Act and can be included as part of the curriculum and embedded into teaching methods. For this to work student participation needs to be meaningful and involve four elements: having a voice; a choice; influence and teachers and students working together.⁵

Evidence reveals that "young people who find their own voice in supportive school environments are more likely to develop a confident voice, a capacity to act in the

⁵ Graham, A., Simmons, C., Truscott, J., Anderson, D., & Moss, A. (2019). Student Participation: A Good Practice Guide for Schools. Centre for Children and Young People, Southern Cross University: Lismore, Australia, accessed at <https://www.scu.edu.au/media/scueduau/research-centres/centre-for-children-and-young-people/research-pdfs/PARC-Good-Practice-Guide-design-WEB-7-5-19.pdf>.

world, and a willingness to lead others. By empowering students we enhance student engagement and enrich their participation in the classroom, school and community. We help students to ‘own’ their learning and development, and create a positive climate for learning.”⁶

Both Victoria and NSW have recognised the importance of student voice and have embedded it into their teaching model in some way. New South Wales has developed a Student Voice, Participation and Leadership model.⁷ In Victoria, the foundation for discussions about student voice, agency and leadership in schools is Essential Element 4, one of the 8 Essential Elements in the Framework for Improving Student Outcomes (FISO). My office will be ready to assist the Department should they wish to develop a similar model.⁸

The look and feel of school is also very important for children and needs to be considered in relation to the overall service that is provided to children. A beautiful, welcoming school encourages education and children wanting to be there. Unfortunately, “poorer” schools often do not have the money to do this, especially compared to elite schools and the state government should be addressing this at the Commonwealth level.

“I would change the way the schools looked. Not making them look like prisons with tall bar gates.”

Year 10 Student, Port Lincoln High School

“I would make classrooms prettier, more toys to play with and more toys that make noise.”

Student, Elizabeth Vale Primary School

The most consistent and notable thing that children talked about was helping the students who are having difficulties at school because of their background, disability, things happening at home or poverty. There was a strong belief that students, particularly the most vulnerable, should be included rather than excluded, dismissed, stigmatised or “left behind”.

“One thing that I would like to change in South Australia is for every child to be able to school and get a good education for the future.”

14 year old student, Omega Fire Ministries

“More effort needs to be put into the schooling system. So many kids are left behind so I think that more support needs to be given to kids with learning difficulties such as

⁶ NSW Government, Student voice and leadership web page, accessed at <https://education.nsw.gov.au/student-wellbeing/attendance-behaviour-and-engagement/student-voice-and-leadership/why-student-voice-matters>

⁷ See NSW Government, Why student voice matters, accessed at <https://education.nsw.gov.au/student-wellbeing/attendance-behaviour-and-engagement/student-voice-and-leadership/why-student-voice-matters>

⁸ See State of Victoria (Department of Education and Training), ‘Amplify- Empowering student voice through voice, agency and leadership, 2019, accessed at <https://www.education.vic.gov.au/Documents/school/teachers/teachingresources/practice/Amplify.pdf>.

dyslexia so on. I also think that our current education system needs some services up dating cause there are so many children suffering because of it! Also more support for teenagers with mental disorders such as anxiety, depression as a result of school and home life”.

Student, Canteen

“Improve education – in general, rise standards of education – Equal opportunities for all children, no matter where you live, how much money you have. Improve education in rural areas – introduce highly educated teachers which they wouldn’t normally have. Equal opportunities.”

15 year old student, Scotch College

They also want principals and teachers to trust that they can be part of the solution as well and help these students.

“Help “bad” students instead of just giving up on them and sending them straight out. For example; I have witnessed “bad” students struggling and see them about to get into trouble but then I assist the student and they actually end up listening to me and I am able to get the student interested. This may be due to me being a student and understanding a student’s interests more. Maybe it should be recommended that the struggling students get a peer to help them, that is not struggling.”

Student, Paralowie R-12 School

Although specific Regulations cannot necessarily be made to enforce student voice, I provide the following feedback to ensure that these Regulations comply with the aforementioned Principles set out in the Act.

My recommendations reflect what children, young people and their families have said to us. Some of these voices are from families and children who have felt stigmatised, excluded or ignored by schools and the education system. These are the voices that need to be heard to ensure that the right of every child to an education and a bright future is fulfilled.

We must remember that the purpose of our education system is to deliver on the needs of the children and young people; where this purpose isn’t being achieved, the system has to change. I am happy to discuss any of these issues with you at a convenient time.

Summary of Recommendations

Recommendation 1: That the regulations be re-worded to ensure that suspension, exclusion or expulsion only occurs as a measure of last resort and that:

- **Teachers have support to better manage classes to ensure a positive and inclusive classroom for all children;**

- Teachers are trained on de-escalation techniques and trauma informed practices (EIRD has estimated that around 25% of children have been reported to the DCP for child neglect or abuse, therefore around a quarter of children in each school have experienced at least one adverse experience in their lifetime which will affect their learning);
- Children with learning difficulties or who are falling behind are given the extra supports that they need;
- There are adequate safeguards to protect against the targeting of or discrimination against certain students, particularly the most vulnerable or at risk.

Recommendation 2: If some sort of exclusion is considered, it should only be done if it is only used as a measure of the last resort. Decisions must:

- Be in the best interests of the child and this should be the paramount consideration;
- Take into account the child's background, circumstances and individual developmental, social, mental and physical needs;
- Include the voice of the child;
- Be decided in consultation with family and carers;
- Consider the repercussions, such as who will look after the child when they are excluded so they are safe and how the exclusion will affect the family's chance to earn an income;
- Ensure that a child, if they are excluded, is given materials and any resources they need so they do not fall behind in their learning;
- Ensure that a child, if they are excluded, is provided with the necessary support to return to school and continue their learning following the period of exclusion.

Recommendation 3: That the Regulations are altered to ensure that children and families are not financially penalised as part of the decision to exclude, suspend or expel a child.

Recommendation 4: That the regulations and policies relating to travelling allowances for students ensure that they are in line with the Principles set out in section 7 of the Act, including that:

- The best interests of the child are the paramount consideration;
- Every child has the right to access an education;
- Children and students are not discriminated against on the basis of their disability.

Recommendation 5: That reasonable adjustments are made to provide transport allowance for students with disabilities based on best interests principles only, not factors such as distance from school.

Recommendation 6: That decision-making about the eligibility of students for travelling allowances and the nature of exemptions is transparent.

Recommendation 7: In relation to searching of bags, if this provision is to remain, it should comply with and recognise children's rights and should not be greater than police powers and there should be some protections for students.

Recommendation 8: That fines should not be used as a method of "punishment".

Recommendation 9: That the policies and practices in relation to Restrictive Practices and clearly link it to the *Education and Children Services Act (2019)* and the Regulations to ensure robustness, openness and transparency in relation to the regulation of Restrictive Practices.

Recommendation 10: Amending the Regulations to provide exemptions in relation to schools terms and school days (Regulations 15 and 16) would enable education and youth justice to work together to establish these "special schools" to provide these children with an opportunity to learn and re-engage with school when they are released back into the community. Similar models could then also be developed for other vulnerable children, such as those with long term health problems.

Recommendation 11: The Act allows that regulations can be developed to grant the "provision of services to, or for the benefit of, students at Government school" and this Office recommends that Regulation 83 be extended to also authorise the provision of services which will enable children who come from poor families to be able to go on camps, excursions and be able to play sport and be given the equipment they require in all areas that relate to their school lives. This could be done in conjunction with the Department for Human Services and other organisations that support children "doing it tough".

Yours sincerely,



Helen Connolly

Commissioner for Children and Young People
Adelaide, South Australia

Feedback on the Education and Children's Services Regulations

Apart from a vague reference to the “rights and duties of students” in Regulation 25, the overall framing of the Regulations in relation to “disciplining” students does not appear to consider the Principles laid down under section 7 of the Act. These Principles include the right of the child to an education, the child's best interests, the right to non-discrimination and the rights for children and parents to have a say in the decisions that affect them. Below, I will look at specific provisions and make recommendations that will align the regulations with the Principles set out in section 7 of the Act.

Part 4, Division 4 – Suspension, exclusion and expulsion of students

The outlook for children who don't receive a solid education is poor and I see it reflected in the Act and Regulations provisions that ensure compulsory attendance. The state's fundamental purpose must be to ensure that every child, no matter their circumstances, receives the education they have a right to. This requires a system willing to adapt to children's needs, rather than the other way around. After all, our children's future is at stake.

In 2019, I ran a number of different activities with stakeholders, children and families to get a better understanding of what is happening in South Australia in relation to suspensions, exclusions and expulsions (these three will now all be referred to exclusions). I worked with Youth Inc. to undertake a peer-based research project on school exclusions. I have spoken to children, families, parents and care givers about their experiences when a child is excluded and I have surveyed children on their thoughts of exclusions: what they are and why they happen.

All these stakeholders are saying that our education system is failing children and young people and “business as usual” is just not good enough. They tell me that a focus on the ‘symptoms’ means that the causes of young people's disengagement from school often go ignored. I consistently heard that exclusions result from a one-size-fits-all approach to behaviour management that fails to take account of children's specific needs, context and their background. I particularly heard of the disproportionate occurrences and impacts of exclusions on children and young people with medical conditions, developmental needs and other mental and physical health needs which were not being met or understood.

I was also very surprised by the young age some children are first suspended or excluded, sometimes in reception or earlier. Often for developmentally appropriate actions, but mostly from actions that arise from a disability or pre-existing condition. Unfortunately, excluding a child so young can have sustained adverse impacts on those children and their families. Their views of education are always mired, they suffer from mental health issues due to stress and anxiety and have to live with the stigma that comes with being excluded. I have had young children telling me that they are “just bad”. These words coming from very young children should not be

occurring. It shows that we are not taking responsibility of our actions as adults. The early school years for children should be encouraging their development, growth and love of learning.

“To me being excluded from education meant the system was geared towards the wrong criteria, being left out from learning opportunities not because you aren’t engaging in the activity but because you are ‘the naughty kid’ or because you have a learning disability and require extra help and attention.”

Young person, Youth Inc. Consultation

The conditions to suspend, exclude or expel a student that are laid down in the draft Regulations do not, in any way, align with the Principles outlined in the Act, particularly the elements that pertain to:

- The best interests of the child;
- Unlawful discrimination;
- Consultation with students;
- Involvement of children, students, parents and persons other than parents who are responsible for the children.

Instead of the draft Regulations embedding the Principles laid out in the Act, the current provisions are creating an environment where decision makers can essentially make decisions based purely on how a child is “acting out”.

The Regulations appear to be one-dimensional as there is no consideration of the reasons behind certain behaviours and only one view point – that of the teacher – appears to be considered. Despite the Principles of the Act, neither the Act nor the Regulations talk about the right of the child or of the child’s parents or carers to have their views known, their right to procedural fairness or appeal. I understand that this could be further teased out in policies to be made more equitable, but it is concerning that it is not outlined in the Regulations.

What children have told me about the primary factors that lead to exclusions

The children I have spoken to have a far more nuanced understanding of the complex reasons behind the behaviours that lead to exclusion. Children have told us clearly and consistently, that “punishing” and “excluding” kids just makes the matter worse and makes them “hate” the teachers and school in general. Many of the young people we spoke with told us that their exclusion from education was caused by the system’s failure to support their participation in the context of their lives, needs and circumstances. Whilst young people recognised that some of the issues challenging their engagement with school had their origins outside of school life, they felt that responses within schools simply aren’t working.

Even where some children understood that disruptive behaviour in class was a significant issue that needs to be addressed, many did not see exclusion as an “ideal” way to manage student behaviour.

"its not ideal but needs to be there for people who are disrupting other peoples learning"

Online survey, Male, 19

Through focus groups and surveys, we asked young people what they considered to be the primary factors that led to either their exclusion or the exclusion of someone they knew. The top responses were as follows.

Student relationships with the teachers and the school

Whilst most young people reported positive relationships with one or more individual teachers, they also spoke of teachers who they felt "mistreated", "labelled" or discriminated against students because of their background.

"Some schools exclude cause they dont know how to handle kids learning disabilities or that their behavioural issues are from a specific condition or diagnosis- and they dont have the funds or staff to make adjustments for that kid to learn how that kid needs to learn, which might be different from the mainstream. So I think some schools descriminate and put the kid in a "too hard basket" when in fact they need to just think outside the mainstream box and find other ways that kid can learn."

Transgender 16, Online survey

"Often can occur (in my experience) in order to appease members of staff and other "valuable" members of the community (Financial contributors)."

Female 17, Online survey

Poor physical or mental health

The way schools responded to young people's mental health needs often contributed to feelings of alienation, self-doubt and disconnection.

"I just couldn't concentrate in my work because I was dealing with so many other issues. People would just think I was lazy."

Youth Inc. Consultation

Learning difficulties

Many children and young people nominated learning difficulties as sometimes or frequently being the cause of school exclusion. Many felt "ignored" by teachers and thought they didn't want to provide students with the extra help they needed.

"I have autism and I get really stressed at school. How will sending me away and taking me from the few friends I have make have calm and be able to do flexible thinking and expected behaviour? I hate my principal and my teacher because they hate me. If there liked me it would be easier for me to like them. But even though I

hate them I don't want to be taken away from my friends. I'll never be able to make new friends."

Male 9, Online survey

"My younger brother was refused entry to [a school] for 6 months on the basis of strong disability discrimination as he has high functioning ASD."

Female 17, Online survey

"Teachers need to understand Autism more. My ASD is why I get suspended and I can't help that."

Male 13, Online survey

Parental situations and factors at home

These issues ranged from parental abuse or neglect, living in home environments characterised by drug use or family violence, an absence of family interest or care around their school participation to issues such as health or disability within the family, which affected parental engagement and support.

"I wouldn't go to school sometimes if dad couldn't be [bothered] or had been drinking or doing drugs the night before."

Young person, Youth Inc. Consultation

Financial issues

Every young person who participated in focus group consultations with Youth Inc. reported difficulties paying for uniforms at some point in their education. They reported that financial issues might exclude students from specific activities, programs and resources, or even from affording basic items necessary for school, or life.

"Couldn't afford PE uniform ... by not having the right uniform I would be excluded and get into trouble."

Young person, Youth Inc. Consultation

Challenges relating to location and transport

Many young people have to get themselves to school without parental support or involvement, often struggling to afford the transport fare on their own.

"My stepdad would make me late to school on purpose. He used to drive me."

Young person, Youth Inc. Consultation

Responsibilities and obligations outside of school

Some responses nominated challenges relating to responsibilities outside of school as sometimes or frequently being the cause of school exclusion.

“After school job in Yr 12, so I finished work at 8/9 every night. I had to stay up really late to finish homework when I got in. I really needed the money, so I didn’t have a choice but to work. I would feel excluded at school because I was late or tired or I hadn’t done my homework.”

Young person, Youth Inc. Consultation

One in five young people who completed our online survey identified gender, sexuality and identity issues as a factor contributing to school exclusions.

Overwhelmingly, young people who had been excluded felt the event that resulted in their exclusion was assessed by the school without context, and that this resulted in an unfair and overly punitive response.

“There has been lots of students that i know have been suspended or excluded or have had unfair punishments i dont understand why sometimes the most simple or harmless things will land you an office time out or several meetings at the office when these things could have esily been sorted out with a classroom teacher or just a warning.”

Female 12, Online survey

Children and their families have highlighted the importance of context to young people’s experience of school and how exclusion can compound pre-existing vulnerability and disadvantage. They explain that once disconnection starts, it can be hard and sometimes even impossible for young people to find a pathway back into education.

“People get suspended and excluded every week, some kids are suspended and get another suspension as soon as they come back.”

Female 15, Online survey

I have heard about the impacts of exclusions on a child’s learning, mental health, relationships, friendships and family stress, family dynamics and parental income. Following a period of exclusion, students are often returning to the same setting and situation that led to their exclusion in the first place. If the actions taken by schools do not properly inform, listen to or include students and their families or carers, it makes it more likely for a cycle of exclusion to continue.

What parents, carers and children have told me about the impacts of exclusions

As well as talking to children, I also spoke to 22 families about the impacts of exclusions on their lives. While these families came from all different socio-economic and cultural backgrounds, they raised common themes and experiences.

I looked at:

- the immediate impact school exclusions have on children and their families, as well how they affect longer-term prospects and wellbeing, and
- the unintended social, education and economic consequences of the exclusion system.

Of the 22 families whose stories we reviewed, the youngest first exclusion occurred at age four. The median age of first exclusion across all children was ten and a half and the average age of first exclusion was around eight and a half years. Over 40% of all children whose experiences we reviewed were formally excluded through suspension from school before completing year two.

These figures don't take into account the age at which informal exclusions started. Around half of the children whose experiences we looked at were also known to be subject to frequent informal exclusions.⁹ These commonly began before their first formal exclusion.

Most of these children had something significant going on in their lives that played a direct or indirect role in their exclusion incident. Eighteen children had one or more diagnosed medical conditions. Eight had a formal diagnosis of Autism Spectrum Disorder (ASD). Four had Attention Deficit Hyperactivity Disorder (ADHD). Only three children had neither a formal diagnosis nor obvious external factors that might have contributed to their behaviour at school.

Overwhelmingly, the children whose stories we looked at were excluded because of circumstances beyond their control, a lack of adequate support to regulate their emotions in the school environment and at times a lack of understanding about what the child was going through.

Schools are required to work with families during any exclusion period to help to create a student development plan, addressing causes and identifying goals and the supports required to achieve these goals. Despite this, the families and children we spoke to felt isolated and unsupported during the exclusion period. Only some families reported receiving schoolwork for their child during periods of exclusion and none of these considered the work to be adequate. Hardly any of the families reported this as a collaborative process, with most reporting that they were not involved or included. In many cases, re-entry plans were given to them to sign without negotiation and little to no follow-up.

Gary's Story

Gary, 17 was excluded from school in year 11 when he was living in short-term crisis accommodation following the breakdown of his relationship with his father. He was experiencing mental health issues, the stress of homelessness, and struggling to get any kind of support. In that state of mind he brought a replica gun, a lighter and lighter fluid to school. He didn't intend to, or actually, use any of these at school or harm anyone with them. He had no previous history of being excluded on the grounds of behaviour, but was still excluded. He was not offered an opportunity to tell his side of the story and try and work out alternative education with the school. As a result his Centrelink payments have ceased, he cannot remain in contact with his peers and he fears that he will not be able to re-engage in education.

Most families felt children simply returned the same situation at school as had led to their original exclusion. Even where additional supports were provided, no family felt confident that they were sufficient to avoid future reoccurrence. Many families felt their child's exclusion had an ongoing effect on how they were perceived and treated by school staff.

Exclusion affects how many children saw themselves, encouraging them to adopt the idea that they were naughty, which negatively impacted their self-esteem. Some children experienced anxiety and depression as a result of their exclusion. Children were isolated from their social groups. Whilst some children preferred to be at home, others definitely didn't. Families reported that these emotional effects of exclusion could exacerbate existing behavioural challenges, exporting this back into the home environment. It also often created jealousies and tensions between siblings.

School exclusions have had a direct economic impact on many families, reducing current and future work opportunities and income-earning potential. Three of the five single parent households previously in work reported having to give up work due to school exclusions and the need to pick their child up from school at short notice and remain at home during the day with their child during periods of exclusion. In the longer-term, one parent had to give up part-time work and study indefinitely. One resigned from full-time work due to a combination of school exclusions and health issues. One had to take unpaid leave, thus losing income to accommodate school exclusion. Another parent has permanently reduced work from full-time to part-time to accommodate ongoing school exclusions.

Children and parents are also concerned about the impact of exclusion on educational progress. Parents became particularly anxious about their child's long-term prospects where exclusions were repeated. Exclusion tended to trigger feelings of disengagement with education for some children, whilst others felt disillusioned and unwanted in the school environment.

Scotty's story

Scotty is six and lives with his parents. He has a strong and supportive family network and his parents are both well-educated and work in professional roles. In reception, Scotty was diagnosed with level 2 Autism Spectrum Disorder (ASD). Despite the school having a plan and knowing of the ASD, he started to be informally excluded in reception and would be sent to the office for parts of the day, sometimes for periods up five hours, or given restricted play preventing him from going to the oval at recess and lunch. He was first formally excluded in the second half of reception due to a physical incident in the playground. The other student was not excluded. During this exclusion he received no school work and had to sign an "agreement" in front of the staff when he returned. His mother has had to halve her working hours because of these incidences.

The experience has damaged Scotty's self-confidence, his ability to form friendships and the way he's seen within the school community. He feels anxious about attending, not knowing if he will be there all day or be sent home. This has led to daytime wetting. Scotty's mum says Scotty understands the need for consequences, but she's heartbroken to hear her young child tell her, "I am a bad person, I can't be good ... I am the naughty kid".

Regulation 24 – Offence for suspended, excluded or expelled student to be on school grounds

In principle, I would oppose the implementation of regulation 24 that would allow schools to issue fines of up to \$200 to students for being on school grounds during a period of exclusion.

This regulation is particularly concerning in light of the evidence that:

- a) Financial difficulties (for example, not being able to afford the appropriate uniform) may be a factor leading to exclusions in the first place, and
- b) Exclusions have a significant impact on a parent's ability to work or maintain an income if they are required to take care of their excluded child.

I have heard throughout many conversations with children and young people that fines simply do not work. Rather than addressing underlying causes of behaviour, fines further stigmatise, exclude and punish children, particularly those who are most vulnerable. Exclusions already isolate children from their peers and their learning. To ban and financially punish them for entering school grounds at any time would further isolate them from other important community connections, including activities like sports.

To assume that fining children will deter them from certain behaviours and lead them to make rational decisions based on the threat of a financial penalty also ignores the evidence that there are significant and well-established differences between how children make decisions and judgments compared to adults. It also

ignores the ability of a child or young person to pay, particularly those who live independently or may already be at risk.¹⁰

Furthermore, the regulations do not set out a minimum age for issuing fines, nor are they clear about how to appeal or dispute decisions. Ultimately, as the Guardian for Children and Young People has pointed out in her submission, the draft regulations appear to be “overly punitive, applied in an inequitable manner, and also do not contain adequate safeguards to mitigate against the targeting of certain students”¹¹.

Based on what children and young people have told me and with a view that suspensions and exclusions are in many cases lost opportunities to engage students, I make the following recommendations.

Recommendation 1: The Regulations be re-worded to ensure that suspension, exclusion or expulsion only occurs as a measure of last resort and that:

- Teachers have support to better manage classes to ensure a positive and inclusive classroom for all children;
- Teachers are trained on de-escalation techniques and trauma informed practices (EIRD has estimated that around 25% of children are reported to the DCP for child neglect or abuse, therefore around a quarter of children in each school have experienced at least one adverse experience in their lifetime which will affect their learning);
- Children with learning difficulties or who are falling behind are given the extra supports that they need;
- There are adequate safeguards to protect against the targeting of or discrimination against certain students, particularly the most vulnerable or at risk.

Recommendation 2: If some sort of exclusion is considered, it should only be done if it is only used as a measure of the last resort.

Decisions must:

- Be in the best interests of the child and this should be the paramount consideration;
- Take into account the child’s background, circumstances and individual developmental, social, mental and physical needs;
- Include the voice of the child;
- Be decided in consultation with family and carers;
- Consider the repercussions, such as who will look after the child when they are excluded so they are safe and how the exclusion will affect the family’s chance to earn an income;

¹⁰ See Commissioner for Children and Young People SA (2019) Public Transport – It’s Not Fine: a report into systemic issues identified by South Australian children and young people in relation to their experience of public transport services, accessed at <https://www.ccyp.com.au/wp-content/uploads/2019/08/CCYP-Fines-Report-V7.3-Web.pdf>.

¹¹ Guardian for Children and Young People, Submission on the Draft Regulations.

- Ensure that a child, if they are excluded, is given materials and any resources they need so they do not fall behind in their learning;
- Ensure that a child, if they are excluded, is provided with the necessary support to return to school and continue their learning following the period of exclusion.

Recommendation 3: The Regulations are altered to ensure that children and families are not financially penalised as part of the decision to exclude, suspend or expel a child.

Regulation 33 – Travelling allowance for students with disabilities

The Regulations make no specific provision about when children with disabilities will be granted transport allowance. Instead it is left to the Chief Executive to determine these conditions. With no clear regulations to guide decision-making about travelling allowances in relation to children with disabilities and the fact that the current policy just applies the same conditions as any other child who can get transport allowance, I am wary that current policies relating to travelling allowances will remain in place without review.¹²

The current decision-making process does not appear to be in-line with the Principles outlined in section 7 of the Act, including:

- That every child has a right to an education and access to education;
- That the best interests of children and students is the paramount consideration;
- That children and students should not to be discriminated against;
- That children, students, families and carers are involved and consulted in decisions that affect them;
- That decisions are made in-line with procedural fairness.

The *Disability Discrimination Act (Cth) 1992* codified these Principles into law. This legislation, along with the *Equal Opportunity Act (SA) 1984*, makes disability discrimination unlawful, promotes equal rights, opportunity and access and codifies key international instruments, including the UNCRC and the Convention on the Rights of Persons with Disabilities (UNCRPD). These protections cover people who have temporary and permanent disabilities, physical, intellectual, sensory, neurological, learning and psychosocial disabilities, diseases or illnesses, work-related injuries, physical disfigurement and medical conditions.

Sections 8(g) and (j) of the Act states that the functions of the Chief Executive includes “reviewing the special needs of particular groups of children (including those living with disability and those who are economically disadvantaged) and providing, assisting in the provision of or promoting services to meet those needs” and “providing or arranging transport of students to and from Government schools”. Therefore, the Regulations and current policies must ensure that students with disabilities have access to safe and reliable transport services that meet their needs and fulfil their right to access an education.

¹² Although current Regulation 82 states that the Director-General may grant children with a disability travelling allowance and there are no conditions, the policy states that it will only be granted if further than 5km away. The current policy appears to conflate current Regulations 80 and 81 which are for any student, unless the Department grants an exemption.

Current practice

My office has heard from stakeholders who are concerned that children with disabilities and their families are being refused travelling allowance on grounds that do not appear to consider the best interests of the child or their right to an education. Many have been on what appears on the surface, to be trivial grounds, including that the child lives too close to the school. I have been told that decisions about whether students are deemed eligible for travelling allowance are opaque. Often children and parents do not have a very clear reason on why a decision has been refused.

Children who have any kind of disability should receive special care and support so that they can live a full and independent life (Article 23 of the CRC). To deny transport allowances to children with disability who are otherwise unable to get to school appears to deny these children the right to education. To be unable to get to school safely, or to arrive at school in such a state that the child is unable to learn, could have a significant impact on a child's dignity and wellbeing as well as impinge upon their right to have an education.

Students with disabilities who are not able to get to school often have high non-attendance if they attend at all, and this has flow on consequences to their social, emotional and spiritual wellbeing. The impact on the financial and general wellbeing of carers is also significant, as they have to make efforts to get children to school or to remain home to care for the child where the child is refused travel allowance and is otherwise unable to get to school safely.

As the table below demonstrates, I am aware of children who have been denied travelling allowances have profound disabilities or health issues and come from families who cannot necessarily afford to pay for transport privately. Getting to and from school safely and arriving in a state where one can learn is in the child's best interest. Despite this, it is interesting to note that only one decision appears to consider the child's "best interest". Further, it appears that the reason why an exemption is granted or not is arbitrary, with similar cases being given different decisions. This raises concerns that decisions are ad-hoc and even discriminatory. A particular concern in the current policy is that children and families can only access the allowance if they live at least 5 kilometres away from school, bringing about extreme hardship for some children and families.

Transport support granted	Transport support refused
<p>Child with rare chronic lung disease, requiring lung and heart transplant. Also has Autism Spectrum Disorder. Family has no driver's licence. Lives within 5km of school. Mother was obliged to walk children in wheelchair to school in all weather. Agreement to provide support for transport to school.</p>	<p>Child with heart condition and can only walk short distances before becoming short of breath and cyanotic. Mother has to push child to school in wheelchair, but cannot do this when wet or too hot. Travelling allowance not granted as child lives 450m away from the school by walking and therefore "parental responsibility".</p>
<p>Child with complex needs: movement disorder, poor oral intake, undiagnosed neurodevelopmental disorder, severe global developmental delay, central hypotonia, myoclonic seizures and many other disorders. Child also has fragile immunity, making her more susceptible to illnesses. Mother was pushing child over train tracks and on bumpy terrain. Family lived within 5 km of the school. Ultimately decided that it was in the child's best interests to be provided transport via a vehicle to school.</p>	<p>Child with complex seizures, advice from treating neurology specialist is that the child requires a chaperone during transport. Child has significant mobility issues and cannot walk to school. Family has no transport. Live less than a 5 minute drive. Only attended school 20% of the time in 2019 because of the above issues. Leader at school suggested that there be transport assistance for the child's mother or staff member, or mandatory reporting for non-attendance. Transport support refused as the Senior Executives were clear that transporting parents was not a favoured position.</p>
<p>Child with cerebral palsy and epileptic encephalopathy. Uses wheelchair. Aging father who does not have an appropriate wheelchair-access vehicle. Transfers 35kg child in and out of vehicle. Agreement to provide support.</p>	<p>Child with complex, frequent seizures, including administration of intranasal midazolam. Travels 45 minutes each way on transport. According to parents, child frequently arrives home with evidence post-seizure.</p>

In order for discrimination to be lawful under the *Disability Discrimination Act* and the *Equal Opportunity Act*, the Department must prove that making the adjustments required to accommodate the person with disability would place an "unjustifiable hardship" on the Department. None of the cases we have reviewed where

transport support was refused would appear to provide the Department with grounds to claim unjustifiable hardship. The small financial cost of making reasonable adjustments to provide transport allowance for students with disability appears to be miniscule compared to the significant social, economic and emotional costs of limiting the right of every student with a disability to access education.

I see the above issue as systemic in nature and will be monitoring the development of new policy and guidelines in relation to travelling allowances to ensure that the best interests of this group of children are a paramount consideration, that they are allowed their right to an education, are not discriminated against, and that the children and their families have a say are listened to in the decisions that affect them.

I therefore make the following recommendations.

Recommendation 4: That the regulations and policies relating to travelling allowances for students ensure that they are in line with the Principles set out in section 7 of the Act, including that:

- The best interests of the child are the paramount consideration;
- Every child has the right to access an education;
- Children and students are not discriminated against on the basis of their disability.

Recommendation 5: That reasonable adjustments are made to provide transport allowance for students with disabilities based on best interests principles only, not factors such as distance from school.

Recommendation 6: That decision-making about the eligibility of students for travelling allowances and the nature of exemptions is transparent.

Additional provisions relating to school discipline – Division 5 Regulations 25, 26 and 27

The wording of the Regulations 25, 26 and 27 appear to run counter to the new Behaviour Support Policy, where instead of supporting students to positively respond to circumstances. The Regulations talk about a school “controlling children” and using “reasonable controls on the behaviour of students and sanctions for offences against those rules”. Further, the blanket right to search student’s bags and forcing students to pay damages is counter to a child’s right to privacy and could result at times in adults abusing this power.

Regulation 25 is a copy and paste from the old Regulations, but it is more punitive as 25, 26 and 27 give additional powers to “control children”. What is of concern is “control” is punitive in nature and may end up in breaking down relationships and trust between schools and children. This is not supported by evidence and runs counter to the principles and practices recently established and supported by the Department in the new Behaviour Support Policy and other policies that are being designed to support the emotional and physical wellbeing of children and young people.

The Behaviour Support Policy talks about departmental behaviour support strategies that must be purposeful and directed at achieving the 7 core functions of behaviour support. In supporting children and young people’s behaviour, department staff will:

- promote, model and support productive and positive behaviour;
- explicitly teach positive behaviour and expectations about behaviour;
- intervene by using the least exclusionary methods to prevent, reduce or redirect behaviours of concern;
- work with children, their families, professionals and other key adults to understand the environmental, social and family context of a child/young person’s behaviours of concern, and to use the capacity of these parties to support positive behaviour change;
- provide visible, fair and equitable behavioural responses that foster confidence and trust;
- repair and restore relationships that have been harmed by behaviours of concern; and
- establish safety and wellbeing for people involved in behavioural incidents, and others.

For the Regulations to be in-line with modern practice and the Departments policies and practices they should talk about “behaviour support” rather than “school discipline” and reflect the language and practices currently used within the Department.

Recommendation 7: That the Regulations better align with the Department’s policies.

Regulation 26 – The Right to search a student’s bag.

Regulation 26 gives power to the principal or any person authorised by a principal to “at any time on school premises search or cause to be searched any bag, locker or other receptacle of a student enrolled at the school”. Not only does this provision impede on a child’s right to privacy contrary to Article 16 of the UNCRC, but it gives schools even wider powers than the police.

The police are only able to search a person without a search warrant where the person consents, if they reasonably suspect that the person is in possession of stolen goods; or an object, possession of which constitutes an offence; or evidence of the commission of an indictable offence. A blanket power to a school can only give rise to occasions where an adult will abuse their power, with a child having no rights to defend themselves.

Recommendation 7: If this provision is to remain, it should comply with and recognise children’s rights and should not be greater than police powers and there should be some protections for students.

Regulation 27 – Payments for damage caused by students

Forcing children to pay for damage caused by them is not only punitive, but could further punish the children as well as parents, especially those families that are already struggling to make ends meet. In my “Public Transport – It’s not Fine Report” where we talked to children about being forced to pay a penalty and in their words “fining” or forcing a child to pay something as a “punishment” does not “teach them a lesson”.

This is supported by Commissioner Nyland when she heard from experts during the Child Protections Systems Royal Commission that supported the abolition of the Victims of Crime Levy with respect to children and young people. It was her recommendation that placing a financial penalty would bring “no benefit to the victims of crime, and the community more generally, in burdening children and young people with large debts they can never repay”. She came to this conclusion after hearing “expert evidence that the past experiences of these children means their behaviour is not likely to respond to punitive approaches”.¹³

Recommendation 8: That fines should not be used as a method of “punishment”.

¹³ Hansard, Hon A.L. McLachlan on 10 March 2016 accessed at <http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-1770>

Authorisation of Restrictive Practices in Education

Restraint and seclusions (amounting to restrictive practices) infringe fundamental human rights such as bodily integrity, liberty and autonomy. It needs to be properly addressed in the state's Education system and recognised so that these practices comply with minimum international standards, are legal, transparent, reported to parents or carers, are eventually eliminated and used in accordance within defensible parameters.

There are many inquiries and reviews revealing an imbalance of power between the student and the school resulting in some form of restraint or seclusion, especially against students with disabilities. Practices do not appear to be improving. A 2019 survey by the national peak body, Children and Young People with Disability Australia where 505 children and families took part in Queensland, New South Wales, Western Australia and Victoria found the following:

- 30.9% experienced restraint or seclusion in the last year and 11.1% experienced both restraint and seclusion;
- 21.0% of students with disability experienced restraint in the last year and the most common form was physical restraint, followed by psycho-social, mechanical and chemical restraint; and
- 21.0% of students with disability experienced seclusion in the last year and the settings for seclusion included solitary confinement with and without supervision in a room, classroom or staff office.

Although the survey does not specifically cover South Australia, based upon discussions with stakeholders, parents and carers, particularly in respect to children with disabilities it is not unreasonable to assume that if the survey was conducted here the findings would be consistent to other states.

South Australia is a common law jurisdiction and common law does not authorise restrictive practices. In fact, "school principals and teachers have statutory and common law responsibilities to maintain safe and supportive school environments."¹⁴ "In South Australia, significant decisions or practices that impinge on the human rights and freedom of movement of a person (such as certain types of restrictive practices) require lawful consent (this could be through parental consent through a plan) or authorisation by a legislatively recognised representative"¹⁵, a legally responsible person or by a legal decision. Therefore, it appears that organisations in South Australia cannot lawfully use restrictive practices unless it is explicitly granted by a legal representative/guardian or is codified into law.

¹⁴ McCarthy T, "Regulating restraint and Seclusion in Australian Government Schools: A Comparative Human Rights Analysis", QUT Law Review, Volume 18, General Issue 2 --, 194-228 at 194.

¹⁵ Re KF; Re ZT; Re WD [2019] SACAT 37 (21 August 2019)

As the Department is aware, the current exploration of Restrictive Practices in South Australia led by David Caudrey will likely result in some changes in the way South Australia approaches Restrictive Practices across all of South Australia. This should ensure compliance with international conventions and guarantee that the use of restrictive practices ends all together, in-line with the UN recommendation to eliminate restrictive practices altogether.

This review is an opportunity to provide a consistent definition in South Australia and response that aligns with Commonwealth and International instruments. This includes in education and in relation to “disciplining” students and in relation to “controlling students” with disabilities.

It is noted that the *Protective practices for staff in their interactions with children and young people: Guidelines for staff working or volunteering in education and care settings 2017 (2nd Edition, revised 2019)* that covers restrictive practices does not clearly indicate which law actually authorises these practices. Further, it states the defences of statutory and common law self-defence can justify teacher’s actions. This appears quite loose and puts a teacher at risk of being charged or sued if they have to use some kind of restrictive practice. This is not much protection for teachers or schools.

In relation to children with disabilities the following sentence is also concerning:

“Children and young people with disorders causing violent and unpredictable behaviours are likely to have formalised restraint procedures agreed to by staff and parents and carers.”

It should be a requirement that all children with disabilities who have challenging behaviour are given a positive behaviour support plan where restrictive practices are detailed and consented to by the parent, child (when they have capacity) and the school. Further, it should be a requirement that if any restrictive practices are used that it should be reported to parents and be reported annually to the Minister.

Recommendation 9: That the Department for Education to review its policies and practices in relation to Restrictive Practices and clearly link it to the *Education and Children Services Act (2019)* and Regulations to ensure robustness, openness and transparency in relation to the regulation of Restrictive Practices.

Part 4, Division 2–School Terms and School Days

Part 6 of the Act provides the Department with an opportunity to establish “special schools” for children in training centres, hospitals and healthcare and other groups within the community. This is an improvement to the old Act and it is an opportunity for children in vulnerable groups to get the education they need. The insertion of this provision shows some foresight and recognition that these children are often disengaged with education and these children are falling behind.

However, Division 2 in the Regulations outlining school days and school terms may restrict the provision of education to these vulnerable groups who really need to learn throughout the year so they can catch up on education they have lost. Currently, Regulations 15 and 16 do not provide for exemptions that will allow schools to keep running during school holidays or allow these special schools to run every day of the week. I would recommend that an exemption be given to special school, for the terms and days and organisations of days.

Allowing education to continue throughout the year for children who have been disconnected from the education system will ensure children’s right to an education are satisfied.

This office has been advocating for a new model for education in the Adelaide Training Centre mirroring Parkville College¹⁶ in Victoria. The college is a public school that provides education for children in the youth justice system or in secure welfare and transitioning out of detention throughout the year. This would allow these children to catch up on their education with the aim of re-engaging in the mainstream system. Parkville College has a FLO enrolled centre, education services for those children in care under “secure welfare” order in Victoria, as well as a centre in Parkville Detention Centre and Malmsbury Detention Centre and wants to ensure that there are no barriers if the government decides to adopt a similar model.

Recommendation 10: Amending the Regulations to provide exemptions in relation to schools terms and school days (Regulations 15 and 16) would enable education and youth justice to work together to establish these “special schools” to provide these children with an opportunity to learn and re-engage with school when they are released back into the community. Similar models could then also be developed for other vulnerable children, such as those with long term health problems.

¹⁶ See <http://parkvillecollege.vic.edu.au/>

The Impact of the cost of school for children and families “doing it tough”

This office has spoken to many children who feel like they are being excluded from school as the cost of going to school is inhibitive. So it is concerning that Regulation 83 does not go far enough to ensure a child and family who is experiencing hardship gets all the support they need. This includes support so they can go on excursions, camps, play sport and do all other extra curricula activities to ensure they feel included.

Children with lived experience of poverty spoke to this office about what it is like to go to school when they cannot afford many things. Being poor has a huge impact on a child's life at school. It affects their ability to learn, to feel comfortable to attend, and how they are treated by their peers, their peers' parents and their teachers.

Not having ‘enough lunch’ or ‘no clean clothes’ were common issues faced by children living in poverty. Participants talked about being ‘hungry’ and ‘smelly’ and wearing ‘shit shoes’. Children also talked about the difficulties they face in getting to school and school sport. They described it as being much ‘harder’ for children whose families are struggling. They spoke about not being able to afford to go on school excursions, or to participate in extra-curricular activities. Some families can't afford to have annual school photos taken. All of these factors can make them feel like they do not belong and can result in being bullied.

All these factors impact on a child's connection with the school, on their ability to develop friendships, and on their sense of self-worth. Participants talked about feeling ‘embarrassed’ and ‘ashamed’. It also prevents the Department from acting on the Parliament's promise that they want each child and young person “to do well at all levels of learning and to have skills for life.”¹⁷

It wasn't just about missing out on the activity itself - it encompassed so much more.

Children living in poverty have a lot more worries.

Female 16, Poverty Project

Children and young people also talked a lot about their inability to afford equipment and materials such as a laptop or paying for printing. Lacking these basic requirements, considered essential to enabling students to do their best work, achieve results and participate in education, meant those who went without were much more likely to struggle with school work or achieve good results.

‘It feels like schools punish you for being poor.’

Young person, Poverty Project

¹⁷ Section Children and Young People (Safety) Act 2017

Having to stay in class during school breaks so you can use the schools technology to get your work done, feels like a punishment rather than a support. Schools simply don't understand that spending breaks with your peers is an important part of childhood: 'It's important to help you be just like the other kids.'¹⁸

Article 28 of the Convention on the Rights of the Child states that:

- Primary education should be free; and
- Secondary education should be made available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

Recommendation 11: The Act allows that regulations can be developed to grant the “provision of services to, or for the benefit of, students at Government school” and this Office recommends that Regulation 83 be extended to also authorise the provision of services which will enable children who come from poor families to be able to go on camps, excursions and be able to play sport and be given the equipment they require in all areas that relate to their school lives. This could be done in conjunction with the Department for Human Services and other organisations that support children “doing it tough”.

¹⁸ Connolly, Helen – Commissioner for Children and Young People SA. The Poverty Project, what South Australian Children and Young People have said about Poverty, 2019, accessed at <https://www.ccyp.com.au/wp-content/uploads/2019/10/201908-Leave-No-One-Behind-CCYP-Poverty-Report-WEB-%C6%92.pdf>