

South Australia

**Education (Ombudsman and School Discipline)
Amendment Bill 2009**

A BILL FOR

An Act to amend the *Education Act 1972*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Education (Ombudsman and School Discipline) Amendment Act 2009*.

2—Commencement

This Act will come into operation 2 months after the date of assent.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Education Act 1972*

4—Amendment of section 5—Interpretation

Section 5(1)—after the definition of *school* insert:

school discipline means the manner in which a school regulates or enforces standards of student behaviour and includes (without limitation)—

- (a) suspension, exclusion or expulsion of students;
- (b) proactive practices for school staff in their interactions with students;
- (c) practices to reduce bullying in schools;

school discipline policy means the policies, guidelines, legislative requirements and other matters relating to school discipline with which Government schools are obliged to comply;

5—Insertion of Part 9

After section 100 insert:

Part 9—Education Ombudsman

Division 1—Preliminary

100A—Interpretation

In this Part—

Education Ombudsman means the Education Ombudsman appointed under this Part (and includes a person acting in that office from time to time);

education service means a service consisting of the provision of educational programs for the purposes of—

- (a) pre-school education; or
- (b) primary or secondary education;

education service provider means a person who provides an education service.

Division 2—Appointment and conditions of office

100B—Appointment

- (1) There is to be an *Education Ombudsman*.

- (2) The Education Ombudsman is appointed by the Governor.

100C—Term of office and conditions of appointment

- (1) The Education Ombudsman is appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment.
- (2) The Governor may remove the Education Ombudsman from office on the presentation of an address from both Houses of Parliament seeking the Education Ombudsman's removal.
- (3) The Governor may suspend the Education Ombudsman from office on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
 - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Education Ombudsman's removal has not been presented to the Governor, the Education Ombudsman must be restored to office.
- (4) The office of Education Ombudsman becomes vacant if the Education Ombudsman—
- (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) completes a term of office and is not reappointed; or
 - (d) is removed from office by the Governor under subsection (2); or
 - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.
- (5) Except as is provided by this section, the Education Ombudsman may not be removed or suspended from office, nor will the office of the Education Ombudsman become vacant.

100D—Remuneration

The Education Ombudsman is entitled to remuneration, allowances and expenses determined by the Governor.

100E—Acting Education Ombudsman

- (1) If for any reason—
- (a) the Education Ombudsman is temporarily unable to perform official duties; or
 - (b) the office of the Education Ombudsman is temporarily vacant,

the Governor may, by notice published in the Gazette, appoint a person to act in the office of the Education Ombudsman and a person so appointed has, while so acting, all the powers, functions and duties of the Education Ombudsman.

- (2) A person who is a Public Service employee may be appointed under this section to act in the office of the Education Ombudsman while remaining a Public Service employee for a term not exceeding 3 months and may, on the expiration of that term, be reappointed (provided that the terms of appointment do not exceed 6 months in aggregate in any period of 12 months).
- (3) Subject to this Act, the terms and conditions of appointment and employment (including the salary and allowances) of the person appointed under subsection (1) will be as determined, from time to time, by the Governor.

100F—Staff

- (1) The Education Ombudsman's staff consists of—
- (a) Public Service employees assigned to work in the office of the Education Ombudsman; and
 - (b) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
- (a) exclude Public Service employees who are members of the Education Ombudsman's staff from specified provisions of the *Public Sector Management Act 1995*; and
 - (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply, and such a notice will have effect according to its terms.
- (3) The Education Ombudsman may, with the consent of the Minister, appoint staff for the purposes of this Part.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
- (5) The Education Ombudsman may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

100G—Delegation

- 5
- (1) The Education Ombudsman may, by instrument in writing, delegate powers or functions under this or any other Act (except this power of delegation) to any person.
- (2) The Education Ombudsman may by instrument in writing revoke or vary any delegation given under subsection (1).
- 10 (3) The exercise or performance of any power or function by a delegate pursuant to subsection (1) does not affect the exercise or performance of that power or function by the Education Ombudsman.

100H—Independence

- 15 (1) In performing and exercising his or her functions and powers under this Part, the Education Ombudsman must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Education Ombudsman is to exercise the Education Ombudsman's statutory functions and powers¹.

Note—

- 20 1 This provision does not derogate from any express power of the Minister under this Act.

Division 3—Investigations

100I—Matters subject to investigation

- 25 (1) Subject to this Act, the Education Ombudsman may investigate—
- (a) any matter relating to the provision of education services by an education service provider; and
- (b) any matter relating to school discipline.
- (2) The Education Ombudsman—
- (a) may make such an investigation—
- 30 (i) on receipt of a complaint; or
- (ii) on the Education Ombudsman's own initiative; and
- (b) must make such an investigation—
- (i) on the referral of a matter by the Minister; or
- 35 (ii) on the referral of a matter by either House of Parliament, or any committee of either of those Houses, or a joint committee of both Houses of Parliament.

5 (3) The Education Ombudsman must not investigate a matter on a complaint under this Part unless satisfied that the procedures for resolving complaints or disputes, if any, of the relevant education service provider have been used appropriately but without resolution of the complaint.

(4) The Education Ombudsman—

10 (a) may not decline to investigate a matter solely on the ground that the complainant is an employee or agent of the relevant education service provider or that the matter relates to the internal management of the relevant education services provider; but

(b) must decline to investigate a complaint if it relates only to a person's terms and conditions of employment.

100J—Conduct of investigation

15 (1) An investigation is to be conducted in such manner as the Education Ombudsman considers appropriate.

(2) The Education Ombudsman may, at any time, require a complainant—

20 (a) to provide further information or documents;

(b) to verify all or any part of the complaint by statutory declaration.

(3) The Education Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.

25 (4) The Education Ombudsman may, in attempting conciliation under subsection (3), act personally or through a member of his or her staff.

(5) The Education Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under subsection (3), determine that the complaint should not be further investigated under this Part.

30 (6) The regulations may make further provision in relation to the conduct of investigations by the Education Ombudsman, including (without limitation)—

35 (a) prescribing circumstances in which the Education Ombudsman may determine not to conduct an investigation following receipt of a complaint; and

(b) making provision with respect to the procedures to be followed on investigations.

100K—Education Ombudsman to have powers of a Royal Commission

For the purposes of an investigation the Education Ombudsman has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—

- (a) the Education Ombudsman were a commission as so defined; and
- (b) the subject matter of the investigation were set out in a commission of inquiry issued by the Governor under that Act.

Division 4—Reports and directions

100L—Reports

- (1) The Education Ombudsman—
 - (a) may prepare a report of his or her findings and conclusions at any time during an investigation; and
 - (b) must prepare such a report at the conclusion of an investigation.
- (2) The Education Ombudsman may provide copies of a report to such persons as the Education Ombudsman thinks fit, and must, in the case of a matter referred to the Education Ombudsman under section 100I(2)(b), provide a report to the person, House or Committee that referred the matter.
- (3) A report may contain information, comments, opinions and recommendations for action.
- (4) No action lies against the Education Ombudsman in respect of the contents of a report under this section.
- (5) The regulations may make further provisions in relation to reports under this section.

100M—Direction in relation to school discipline policy

- (1) The Education Ombudsman may, by notice in writing, issue a direction to the Minister in relation to school discipline policy.
- (2) If, following receipt of a notice under this section, the Minister is of the opinion that, in the circumstances, failure to comply with the terms of the notice would be reasonable and justifiable, the Minister may determine not to comply with the notice (in which case he or she must advise the Education Ombudsman of that determination, in writing, as soon as practicable).

- (3) If the Minister fails to comply with the terms of a notice received under this section the following provisions apply:
- (a) the Minister must, at the request of the Education Ombudsman, report to the Education Ombudsman within the time allowed in the request on the reasons for the failure to comply with the notice;
 - (b) if, following receipt of the Minister's report, the Education Ombudsman is of the opinion that the failure to comply with the notice was unjustified or unreasonable, the Education Ombudsman may make a report on the matter to the Premier;
 - (c) the Education Ombudsman may forward copies of any report to the Premier to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.
- (4) A power or function of the Education Ombudsman under this section must not be delegated.

Division 5—Miscellaneous

100N—Annual report

- (1) The Education Ombudsman must in each year prepare a report on the work of the Education Ombudsman's office during the preceding year and send copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly to be laid before their respective Houses at the earliest opportunity.
- (2) The Education Ombudsman must send a copy of each annual report to the Minister.

6—Insertion of section 101D

After section 101C insert:

101D—Referral of school discipline policies to Social Development Committee

- (1) The Minister must, within 6 sitting days after the commencement of this section, table in both Houses of the Parliament a document setting out the school discipline policy.
- (2) If any variation is proposed to any component of the school discipline policy, the Director-General must refer the proposed variation to the Committee by providing the Committee with a report setting out details of the proposed variation.
- (3) A proposed variation of the school discipline policy cannot come into effect—
 - (a) if, within the prescribed period, the Committee presents a final report recommending that the variation be approved—until the report is so presented; or

(b) if, within the prescribed period, the Committee requests the Director-General to provide further information in relation to the variation—until the further information is provided to the Committee and either—

- 5 (i) the Committee presents a final report recommending that the variation be approved; or
- (ii) a period of 14 days passes after the provision of the further information and no final report is presented by the Committee in relation to the variation during
- 10 that period,

whichever occurs first; or

(c) if, within the prescribed period, no further information is requested by the Committee in accordance with paragraph (b) and no final report is presented by the

15 Committee in relation to the variation—until the expiration of the prescribed period.

(4) If, at any time before—

- (a) the expiration of the prescribed period; or
- (b) if, within the prescribed period, the Committee requests the
- 20 Director-General to provide further information in relation to the proposed variation—the expiration of the period of 14 days after the provision of the further information,

the Committee presents a final report recommending that the proposed variation be rejected, the variation cannot come into effect (but nothing prevents the proposed variation being the subject of a further referral to the Committee in accordance with this section).

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(5) The Minister must, within 6 sitting days after any variation of the school discipline policy comes into effect, table in both Houses of the Parliament a document setting out the school discipline policy as so varied.

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(6) In this section—

Committee means the Social Development Committee of the Parliament;

final report, in relation to the Committee, means a final report presented by the Committee in accordance with the *Parliamentary Committees Act 1991*;

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prescribed period means the period of 45 days after a proposed variation is referred to the Committee in accordance with subsection (2).

40 7—Amendment of section 107—Regulations

Section 107(2)—after subparagraph (sb) insert:

- (sc) any matter pertaining to the performance of functions and powers by the Education Ombudsman; and

Schedule 1—Transitional Provisions

1—Retrospective Application

5 A complaint may be made and dealt with under Part 9 of the Act (as in force after the commencement of section 5 of this Act) even though the circumstances that give rise to the complaint occurred before the commencement of section 5 if the complainant became aware of those circumstances not earlier than 2 years before the commencement of section 5.

2—Transfer from State Ombudsman

- 10 (1) The State Ombudsman may, if the State Ombudsman thinks fit and with the agreement of the Education Ombudsman, transfer to the Education Ombudsman the conduct of an investigation of a complaint made to the State Ombudsman before the commencement of section 5.
- (2) The Education Ombudsman may adopt any findings or determinations of the State Ombudsman that may be relevant to an investigation transferred under subsection (1).
- 15 (3) The consent of the complainant is not required before an investigation may be transferred to the Education Ombudsman under subsection (2).
- (4) In this clause—

State Ombudsman means the Ombudsman under the *Ombudsman Act 1972*.

3—Regulations

20 The regulations may make other provisions of a saving or transitional nature.