

South Australia

Education and Children's Services (Inclusive Education) Amendment Act 2025

An Act to amend the *Education and Children's Services Act 2019*.

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- 1 Review of operation of Act
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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 and Children's Services (Inclusive Education) Amendment Act 2025*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Education and Children's Services Act 2019*

3—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *director* insert:

disability, in relation to a person, means—

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

and includes a disability that—

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person;

(2) Section 3—after subsection (1) insert:

- (1a) To avoid doubt, a disability that is otherwise covered by the definition of *disability* in subsection (1) includes behaviour that is a symptom or manifestation of the disability.

4—Amendment of section 4—Application of Act to non-Government schools

Section 4—after subsection (2) insert:

- (2a) A provision of this Act that is expressed to apply only to non-Government schools will be taken not to apply to a Government school.

5—Amendment of section 7—Objects and principles

- (1) Section 7(1)—after paragraph (c) insert:
 - (ca) ensuring that the provision of education and children's services in this State is inclusive by enabling the participation of children and students with a disability and supporting the development of their personalities, talents, creativity and mental and physical abilities to their fullest potential; and
- (2) Section 7(4)(d)—delete "mental or physical impairment" and substitute:

disability

6—Amendment of section 62—Chief Executive may direct that child be enrolled in particular school

Section 62(1)(a)—delete paragraph (a)

7—Insertion of Part 7 Division 1 Subdivision 1A

Part 7 Division 1—after Subdivision 1 insert:

Subdivision 1A—Enrolment of children or students with a disability

63A—Enrolment of children with disability

- (1) A child must not be refused enrolment at a school on the basis that the child has a disability unless the enrolment of the child would impose an unjustifiable hardship on the school.
- (2) For the purposes of subsection (1), in determining whether a hardship that would be imposed on a school would be an ***unjustifiable hardship***, all relevant circumstances of the particular case must be taken into account, including—
 - (a) the matters referred to in section 11 of the *Disability Discrimination Act 1992* of the Commonwealth; and
 - (b) any relevant provisions of the *Disability Standards for Education 2005* made under the *Disability Discrimination Act 1992* of the Commonwealth.

63B—Reporting in relation to refusal or cancellation of enrolment of children or students with disability

- (1) The principal of a school must, on or before 31 May in each year, in the manner and form determined by the Minister, provide a report, or cause a report to be provided, to the Minister, setting out the following information (the ***required information***) in relation to the preceding calendar year:
 - (a) the number of children with a disability that were refused enrolment at the school on the ground that it would impose an unjustifiable hardship on the school (including if there were no such children);

- (b) the number of students with a disability whose enrolment at the school was cancelled (including if there were no such students);
 - (c) any measures taken by the school to reduce the number of refusals or cancellations of enrolments of children or students with a disability;
 - (d) any other information prescribed by the regulations for the purposes of this subsection.
- (2) For the purposes of subsection (1), and without limiting that subsection, a principal of a school will be taken to have provided a report, or caused a report to be provided, to the Minister, if—
 - (a) the school records the required information on a record management system (however described); and
 - (b) on or before 31 May in each year—a report consisting of an extract of the record management system containing the required information is provided to the Minister, in the manner and form determined by the Minister.
- (3) To avoid doubt, a report referred to in subsection (2)(b) may include required information that relates to more than 1 school.
- (4) A principal of a school must not, without reasonable excuse, refuse or fail to comply with subsection (1).
Maximum penalty: \$2 500.
- (5) The Minister must, on or before 31 August in each year, in the manner and form determined by the Minister, publish a report setting out the following information in relation to the preceding calendar year:
 - (a) the number of times children with a disability were refused enrolment at Government schools on the ground that it would impose an unjustifiable hardship on the school;
 - (b) the number of times children with a disability were refused enrolment at non-Government schools on the ground that it would impose an unjustifiable hardship on the school;
 - (c) the number of times the enrolment of students with a disability at Government schools was cancelled;
 - (d) the number of times the enrolment of students with a disability at non-Government schools was cancelled;
 - (e) information regarding any trends identified in relation to—
 - (i) the refusal or cancellation of the enrolment of children or students with a disability; and
 - (ii) measures taken to reduce the number of refusals or cancellations of enrolments of children or students with a disability by—
 - (A) Government schools; and

- (B) non-Government schools;
- (f) any other information prescribed by the regulations for the purposes of this subsection.
- (6) Information provided for the purposes of this section must not identify (either directly or indirectly) any individual to whom the information relates.
- (7) Information provided under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.

8—Amendment of heading to Part 7 Division 3

Heading to Part 7 Division 3—after "students" insert:

—Government schools

9—Insertion of section 80A

After section 80 insert:

80A—Reporting in relation to suspension, exclusion and expulsion of students with disability

- (1) A principal of a Government school must, on or before 31 May in each year, in the manner and form determined by the Minister, provide a report, or cause a report to be provided, to the Minister, setting out the following information (the *required information*) in relation to the preceding calendar year:
 - (a) the number of times students with a disability were suspended, excluded or expelled from the school (including if there were no such times);
 - (b) the number of students with a disability that were suspended, excluded or expelled from the school (including if there were no such students);
 - (c) of the students with a disability that were suspended, excluded or expelled from the school—
 - (i) the number of instances each student was suspended, excluded or expelled (as the case requires); and
 - (ii) in relation to each such instance—the number of school days for which that student was suspended, excluded or expelled (as the case requires); and
 - (iii) the grounds on which the student was suspended, excluded or expelled (as the case requires);
 - (d) of the total number of students with a disability enrolled at the school—the proportion of those that were suspended, excluded or expelled.

Maximum penalty: \$2 500.

- (2) For the purposes of subsection (1), and without limiting that subsection, a principal of a Government school will be taken to have provided a report, or caused a report to be provided, to the Minister, if—
 - (a) the school records the required information on a record management system (however described); and
 - (b) on or before 31 May in each year—a report consisting of an extract of the record management system containing the required information is provided to the Minister, in the manner and form determined by the Minister.
- (3) To avoid doubt, a report referred to in subsection (2)(b) may include required information that relates to more than 1 school.
- (4) The Minister must, on or before 31 August in each year, in the manner and form determined by the Minister, publish a report of the information provided in relation to Government schools under subsection (1).
- (5) Information provided for the purposes of this section must not identify (either directly or indirectly) any individual to whom the information relates.
- (6) Information provided under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.

10—Insertion of Part 7 Division 3A

Part 7—after Division 3 insert:

Division 3A—Suspension and expulsion of students—non-Government schools

81A—Non-Government school to have policy in relation to suspension and expulsion of students

- (1) The governing authority of a non-Government school must ensure that the school has a policy regarding the use of exclusionary discipline in relation to students of the school that—
 - (a) sets out—
 - (i) the general approach of the school to managing student behaviour and the purpose for which exclusionary discipline may be used; and
 - (ii) the types of exclusionary discipline that may be used, and the grounds on which they may be imposed; and
 - (iii) the persons, or the holders of a particular office, that may authorise the use of each type of exclusionary discipline in relation to students of the school; and

- (iv) the maximum length of time for which a student may be suspended from the school that will ordinarily apply; and
 - (v) the maximum length of time for which a student may be suspended from the school that will apply in exceptional circumstances; and
 - (vi) the process for a student to return to the school following a period of suspension; and
 - (vii) any other matters prescribed by the regulations for the purposes of this subsection; and
- (b) is, as far as is reasonably practicable, in relation to the matters referred to in paragraph (a), commensurate with any policy relating to exclusionary discipline that applies to Government schools.
- (2) The governing authority of a non-Government school must ensure that the school's policy under subsection (1) is published on the school's website.
- (3) In this section—
- exclusionary discipline* means the following:
- (a) the suspension of a student from attendance at a school;
 - (b) the expulsion of a student from a school.

81B—Reporting in relation to suspension and expulsion of students with disability

- (1) A principal of a non-Government school must, on or before 31 May in each year, in the manner and form determined by the Minister, provide a report, or cause a report to be provided, to the Minister, setting out the following information (the *required information*) in relation to the preceding calendar year:
- (a) the number of times students with a disability were suspended or expelled from the school (including if there were no such times);
 - (b) the number of students with a disability that were suspended or expelled from the school (including if there were no such students);
 - (c) of the students with a disability that were suspended or expelled from the school—
 - (i) the number of instances each student was suspended or expelled (as the case requires); and
 - (ii) in relation to each such instance—the number of school days for which that student was suspended or expelled (as the case requires); and

- (iii) the grounds on which the student was suspended or expelled (as the case requires);
 - (d) of the total number of students with a disability enrolled at the school—the proportion of those that were suspended or expelled.
- Maximum penalty: \$2 500.
- (2) For the purposes of subsection (1), and without limiting that subsection, a principal of a non-Government school will be taken to have provided a report, or caused a report to be provided, to the Minister, if—
 - (a) the school records the required information on a record management system (however described); and
 - (b) on or before 31 May in each year—a report consisting of an extract of the record management system containing the required information is provided to the Minister, in the manner and form determined by the Minister.
 - (3) To avoid doubt, a report referred to in subsection (2)(b) may include required information that relates to more than 1 school.
 - (4) The Minister must, on or before 31 August in each year, in the manner and form determined by the Minister, publish a report of the information provided in relation to non-Government schools under subsection (1).
 - (5) Information provided for the purposes of this section must not identify (either directly or indirectly) any individual to whom the information relates.
 - (6) Information provided under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.

81C—Regulations in relation to decision to suspend or expel a student from non-Government school

The regulations may specify matters to which a person must have regard in determining whether to suspend or expel a student from a non-Government school.

Schedule 1—Review of operation of Act

1—Review of operation of Act

- (1) The Minister must cause a review of the operation of the provisions of the *Education and Children's Services Act 2019* enacted or amended by this Act to be conducted, and a report on the results of the review to be submitted to them.
- (2) The review must be completed, and the report submitted to the Minister, before the third anniversary of the commencement of this clause.
- (3) The Minister must cause a copy of the report on the review to be laid before both Houses of Parliament within 12 sitting days after the Minister receives the report.

(4) In this clause—

Minister means the Minister to whom the administration of the *Education and Children's Services Act 2019* has been committed.