ATSILS
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562
Level 5, 183 North Quay, Brisbane Qld 4000
PO Box 13035, George Street, Brisbane Qld 4003
07 3025 3888 | Freecall 24/7: 1800 012 255
07 3025 3800
info@atsils.org.au
www.atsils.org.au

26th March 2024

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000

By email: eetsc@parliament.qld.gov.au

Dear Committee Secretary,

Re: Consultation on the Education (General Provisions) and Other Legislation Amendment Bill 2024

Thank you for the opportunity to provide comments in relation to the Education (General Provisions) and Other Legislation Amendment Bill 2024 (**Bill**) which seeks to make amendments to the *Education (General Provisions) Act 2006* (**Act**) including, for the purposes of this consultation, amendments which impact the existing legislative regime for student disciplinary absences (**SDAs**) in Queensland state schools (**Consultation**). Recent statistics obtained via Right to Information access applications of the Department of Education have evidenced that Aboriginal and Torres Strait Islander children, children with a disability and children in out-of-home care are overrepresented in the cohort of children that are receiving SDAs in Queensland state schools. The evidence also shows that the risk of a child receiving an SDA significantly increases when they belong to more than one of the above-mentioned cohorts. Accordingly, improving the legislative framework relating to SDAs is an important step in addressing some of these concerns. We support proposed amendments contained in the Bill which relate to clarifying the process for decision-making about student suspensions and exclusions and inserting stipulated timeframes for decision-making. However, we have identified some proposed amendments which we are concerned about and some opportunities to make amendments to the existing framework that have not been included in this Bill which we have sought to identify in this submission.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

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

Introductory comments

Recent Right to Information applications made to the Queensland Department of Education revealed that between 2015-2019, students identifying as Aboriginal and/or Torres Strait Islander received approximately one quarter of all recorded SDAs despite only representing 10.6% of all Queensland full-time state school enrolments in August 2020[1]. Aboriginal and Torres Strait Islander children that have a disability and/or are in out-of-home care were found to be at an even greater risk of receiving an SDA. These children are, without doubt, amongst the most marginalised and vulnerable children in the State and Australia more broadly.

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

Closing the Gap

Participation and engagement of Aboriginal and Torres Strait Islander children in schooling is directly correlated to the following Closing the Gap targets:

- Target 5 - Students achieve their full learning potential
  By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 per cent).

- Target 6 – Students reach their full potential through further education pathways
  By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 per cent).

Participation in education is also a pre-requisite for, or at minimum interrelated to, many other Closing the Gap targets including obtaining employment after schooling/education, securing housing and reducing overrepresentation of Aboriginal and Torres Strait Islander individuals in the criminal justice system.

It is imperative that, consistent with:
(a) the stipulated outcomes in the National Agreement on Closing the Gap (see outcomes (a) - Shared Decision-Making; and (b) Building the Community-Controlled Sector); and
(b) the importance of ensuring the self-determination and cultural agency of Aboriginal and Torres Strait Islander peoples, as enshrined in the National Agreement on Closing the Gap,
any solutions, policies, strategies and implementation thereof to address the overrepresentation of Aboriginal and Torres Strait Islander children and Aboriginal and Torres Strait Islander children with a disability and/or in out-of-home care in the cohort of children receiving SDAs in Queensland state schools are **co-designed** with the Aboriginal and Torres Strait Islander community.

ATSILS' joint-advocacy – "A Right to Learn"

We want to see our children and young people engaged in education, feeling supported and safe and becoming thriving members of our community. To this end, for over a year, we have been engaged in targeted advocacy in partnership with Queensland Advocacy for Inclusion (**QAI**), PeakCare, Youth Advocacy Centre (**YAC**) and Youth Affairs Network Qld, calling for the Queensland Government to make changes to address the overrepresentation of Aboriginal and Torres Strait Islander

children, children with disability, children in out-of-home care and children who belong to more than one of those cohorts via our joint-campaign entitled "A Right to Learn"[2].

Preliminary comments

We strongly reiterate and endorse the *A Right to Learn* campaign's five asks in response to the Bill, including:

1. Using suspension as a last resort. We agree with the Disability Royal Commission recommendation that school suspensions should be a last resort or to prevent 'serious harm'.

2. Currently, the Bill only allows an appeal when a student has been suspended for 11 days or more in a year. We believe that there should be appeal rights for all suspensions, regardless of the number of days.

3. The implementation of a multi-tiered support system. Children experiencing 0multiple suspensions require support through a multi-tiered system to address their needs effectively.

4. We support the need for increased transparency and accountability in schools regarding efforts to reduce suspensions, such as submitting an annual report to Parliament, establishing a Board to oversee suspensions, and implementing scorecards for schools.

5. We ask for inclusion of a Students Rights section in the Bill to enshrine the right to learn for all Queensland students.

Comments on the provisions of the Bill

We note that we have previously provided a detailed submission on the Consultation Draft for this Bill. Accordingly, this submission will only include comment on notable changes between the Consultation Draft and the Bill as introduced into Parliament or aspects of the Bill which we seek to make further comment upon.

[2] https://www.arighttolearn.com.au.

1. Guiding Principles

A. We welcome the insertion of the word "inclusive" at proposed section 7(b)(ii) such that it reads that education should be provided in a way that "promotes an inclusive, safe and supportive learning environment for children and young people".

B. We recommend that, reference be also made in section 7 of the Bill (Guiding Principles) to the fundamental importance of maintaining consistency in the participation of a student in education and acknowledgement of the negative impacts that disruption to schooling might cause for a child.

2. Suspensions

A. In the Consultation Draft of this Bill, it was proposed that new section 282A be inserted into the Act to explicitly list the matters that the principal must consider before suspending a student on a ground mentioned in section 282(1) of the Act. In the Bill, this list is proposed to be moved to the Education (General Provisions) Regulation 2017 (**Regulation**) (see clauses 77 and 120 of the Bill).

In our view, proposed section 282A which includes the list of maters that the principal must consider before suspending a student on a ground mentioned in section 282(1) of the Act should remain in the Act, rather than be placed in the (more readily varied), Regulation.

B. The list of matters that the principal must consider before suspending a student includes, notably, proposed section 60D(5) of the Regulation (in Clause 120 of the Bill) which relates expressly to Aboriginal and Torres Strait Islander students and provides as follows:

(5) For an Aboriginal student or a Torres Strait Islander student, the matters include—

(a) whether the cultural background of the student, as an Aboriginal person or Torres Strait Islander person, has been sufficiently recognised and supported in the school environment; and

(b) whether further steps could be taken to better recognise and support the student's cultural background in the school environment.

C. While we welcome the inclusion of a specific clause which has been intended to improve outcomes for Aboriginal and Torres Strait Islander students, we note the following concerns regarding the language used in this clause:
   - We are unclear as to what is meant by the words "sufficient recognition of the individual's cultural background, as an Aboriginal and Torres Strait Islander student". In practice, what would this mean?
   - We are unclear as to what constitutes "support of the individual's cultural background".

   We recommend that subsection (5) be redrafted to read as follows:

   (5) For Aboriginal and Torres Strait Islander students, the matters include—
   (a) whether the cultural background as an Aboriginal and/or Torres Strait Islander student has been sufficiently recognised and supported in the school environment;
   (b) steps that the school has made to make the school culturally safe, including in relation to providing cultural inclusivity in the school's curriculum;
   (c) any effect the school environment may have had on the suspension behaviour;
   (d) any unique circumstances of the student or risk factors that might apply to the student; and
   (e) the impact of disruption to participation in schooling on the student in the context of risk factors, including the risk of disengagement with education and potential poor outcomes for the child.

D. We have concerns regarding proposed section 60D(4) of the Regulation which provides as follows:

   (4) For a student with disability that is relevant to the suspension behaviour, the matters include—
   (a) adjustments made or other action taken by the school to support the student in relation to the student's disability at the school; and
   (b) whether further adjustments or action could be considered by the principal or other staff of the school to better support the student in relation to the student's disability at the school.

   We are interested to know how it would be determined that a student's disability is relevant to the suspension behaviour. Whilst not explicit, it could be assumed on the drafting that a principal might make this determination. If that is what is intended, on the basis that a principal does not have the particular expertise to

make determinations as to how a particular disability manifests in any individual child's behaviour or conduct, we assume that the principal would make this determination in consultation with the student and their parents/guardians and, where appropriate/possible, obtain advice from an expert (e.g., doctor, psychiatrist, other relevant health specialist). We believe this to be an important point as the principal must only consider the matters in (a) and (b) for "students with a disability that is relevant to the suspension behaviour". What if it is determined that a student has a disability, but it is not relevant to the suspension behaviour? Would there not then be consideration of whether further adjustments or actions could have been considered by the principal or other staff of the school to better support the student? We recommend that this provision explicitly state that in determining whether a student's disability is relevant to the suspension behaviour, the principal must consult with the student and their parents/guardians and, where appropriate/possible, obtain advice from an expert (e.g., doctor, psychiatrist, other relevant health specialist).

E. We recommend that any timeframes relating to the decision-making process relating to suspensions sit in the Act and not the Regulation (in the Bill, they are proposed to exist in the Regulation). Whilst we acknowledge the benefits of flexibility that a Regulation provides, many decision-making processes across various pieces of State legislation contain timeframes embedded in the Act itself. We do not see why this should be different, especially given the clear need for transparency and rigour over the suspension process.

F. We consider that the proposed period of 40-school days which is prescribed for the chief executive to make a decision on an appeal of a suspension is excessive and we recommend that this prescribed period be reduced to 20 school days.

3. <u>Exclusions</u>

A. Similarly to the proposed regime for suspensions under the Bill, the list of matters that the principal must consider before excluding a student on particular grounds is proposed to exist in the Regulation, instead of the Act itself (see clause 120 of the Bill). For the reasons outlined earlier, we recommend that this list must exist in the Act and not the Regulation.

B. Similarly to the proposed regime for suspensions under the Bill, proposed section 60J(4) of the Regulation also provides specific matters that a principal must consider "for a student with a disability that is relevant to the exclusion behaviour".

We refer to our concerns and recommendation outlined earlier regarding proposed 60D(4) of the Regulation which equally apply here.

C. Similarly to the proposed regime for suspensions under the Bill, proposed section 60J(5) of the Regulation provides:

> *(5) For an Aboriginal student or a Torres Strait Islander student, the matters include—*
> *(a) whether the cultural background of the student, as an Aboriginal person or Torres Strait Islander person, has been sufficiently recognised and supported in the school environment; and*
> *(b) whether further steps could be taken to better recognise and support the student's cultural background in the school environment.*

D. In addition to our concerns regarding the wording of this proposed section 60D(5) of the Regulation which we outlined earlier and which equally apply to proposed section 60J(5) of the Regulation as it contains the same wording, we recommend that subsection (5) be redrafted to read as follows:

> *(5) For Aboriginal and Torres Strait Islander students, the matters include—*
> *(a) whether the cultural background as an Aboriginal and/or Torres Strait Islander student has been sufficiently recognised and supported in the school environment;*
> *(b) steps that the school has made to make the school culturally safe, including in relation to providing cultural inclusivity in the school's curriculum;*
> *(c) any effect the school environment may have had on the suspension behaviour;*
> *(d) any unique circumstances of the student or risk factors that might apply to the student; and*
> *(e) the impact of disruption to participation in schooling on the student in the context of risk factors, including the risk of disengagement with education and potential poor outcomes for the child.*

E. Additionally, for reasons outlined earlier, we recommend that any timeframes relating to the decision-making process relating to exclusions sit in the Act and not the Regulation (in the Bill, they are proposed to exist in the Regulation).

4. Cancellation of enrolment

A. We are concerned regarding the wording of proposed section 317 of the Act (Notice of proposed cancellation) which provides that "The principal of the State

school may propose to cancel the student's enrolment if the principal is reasonably satisfied the student's behaviour amounts to a refusal to participate in the educational program provided at the school". Our concerns are founded on the lack of extrapolation on what constitutes behaviour of a student that amounts to a refusal to participate in the educational program. We are particularly concerned about what this wording might mean for students with a disability. Whilst we appreciate that there is a show cause process wherein a student is able to make representations to refute a proposed cancellation of their enrolment based on the principal being reasonably satisfied that the student's behaviour amounts to a refusal to participate in the educational program provided at the school and submissions may also be made in relation to a subsequent decision to cancel enrolment, how effective that process is for a student with disability will largely depend on the student's ability to make those representations/submissions within the stipulated timeframes or be supported by parents/guardians/advocates to do so. In the event that the student does not have the support required and/or if they do not reach out to a support organisation for assistance, it is possible that they could fall between the cracks and have their enrolment cancelled (without clear guidance in the legislation on what constitutes a "refusal to participate in the relevant educational program". The impact of cancellation of enrolment for children living in remote and rural areas could be very significant given the limited alternative places to enrol. We have seen this in practice. We recommend that the Bill include amendments to define the term "refusal to participate in the relevant educational program".

5. Student Support Plans

A. Under the proposed amendments, it appears that the chief executive is only obligated to make a policy in relation to student support plans. There does not appear to be any legislative obligation to put a student support plan in place for any student that falls into a relevant category of student for whom student support plans should be established, including Aboriginal and Torres Strait Islander students and students with a disability. Whilst having a policy is important, without a positive legislative obligation to establish a student support plan for a relevant student, the policy objective behind these proposed amendments and potential benefits will not be fully realised.

B. We also reiterate our submission on the Consultation Draft that when a student support plan is being formulated for a child that identifies as an Aboriginal and/or Torres Strait Islander student, there must be representatives from a local community-controlled organisation at the table to co-design the plan for the child.

This is consistent with the outcomes of Closing the Gap and will give the student the best chance of success. It will also be fundamental to making the process culturally safer.

Additional comments

The Bill includes some amendments relating to the Ekindy program. Relevantly, the Explanatory Notes to the Bill, on page 4, state:

> *To further respond to challenges for families in rural and remote locations which have limited access to a face-to-face kindergarten program due to their unique circumstances, access is provided for eligible children that are geographically isolated or experiencing difficulty attending a program due to medical issues, or due to an itinerant family lifestyle, through the eKindy program. SDK programs and eKindy provides families in rural and remote locations access to a quality kindergarten program, no matter where they live.*

Whilst EKindy will have its benefits for those who are able to afford and maintain connection to an internet service and purchase of a device, that is not the reality for many families including some who live in remote and rural communities where there might need to be a choice between an internet connection and putting food on the table. We are interested to know what the Department's policies and plans are with respect to development of more physical culturally safe early learning centres for children living in remote and regional communities and for whom EKindy might be out of reach.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer