

# Education (Strengthening Discipline in State Schools) Amendment Bill 2013

## Explanatory Notes

### Short title

This short title of the Bill is the Education (Strengthening Discipline in State Schools) Amendment Bill 2013.

### Policy objectives and the reasons for them

The objective of the Bill is to amend the *Educational (General Provisions) Act 2006* (EGPA) to support the implementation of initiatives to strengthen discipline in Queensland state schools by:

- providing Queensland state school principals with stronger disciplinary powers and more flexibility and autonomy around the making of discipline decisions;
- bolstering the grounds for suspension and exclusion; and
- reducing administrative burdens to enable quick and firm responses to problem behaviour.

On 8 April 2013, the Queensland Government announced its goal to enhance school discipline as part of the Queensland Government action plan for Queensland schools: *Great teachers = Great results*. The action plan recognises the importance of clear and consistent discipline in a high quality education system; and aims to provide Queensland's state school principals with a greater level of autonomy in making decisions about how to run their school. Strengthening principals' powers underpins this reform agenda.

Discipline plays an important role in a young person's social development and facilitates good order and management in a school. Good order and discipline are necessary to create a safe, supportive and focused environment for students and teachers. The maintenance of a disciplined learning environment is of benefit to not only the school community, but to the community as a whole. Schools and their leaders require powers that enable them to efficiently and effectively manage school discipline.

Chapter 12 of the current EGPA deals with the good order and management of state educational institutions. Departmental officers, through consultation with state school principals, identified certain obstacles that principals face in implementing strong school discipline. The obstacles are caused by over-prescription in chapter 12 of the EGPA, particularly with regard to the range of disciplinary options available to principals and the limitations on when disciplinary strategies can be utilised. For example, behaviour

improvement conditions can only be imposed for challenging behaviour that might result in exclusion and are limited to requiring the student's engagement in a behaviour management program. Detentions may only be implemented for part of a lunch recess and for short periods after school. These restrictions limit the ability of principals to address early signs of challenging behaviour and develop strategies that benefit the student and the school community.

Chapter 12 sets out lengthy and detailed processes that principals are required to follow when making suspension, exclusion or cancellation of enrolment decisions. For example, principals are required to discuss or meet with parents regarding suspensions decisions and must meet with parents regarding exclusion decisions. When proposing to exclude a student, principals must give students a notice that includes details about making a submission to the principal against the decision. A show cause process must be followed when a principal decides to cancel the enrolment of a student above compulsory school age for non-participation in the educational program.

This over-prescription has placed an administrative burden on decision makers (primarily principals), and the red tape connected with discipline decision-making diverts the valuable time of principals away from their broader school management responsibilities. The detailed processes for suspension, exclusion and cancellation of enrolment decisions can also delay timeliness of action. This is particularly problematic when action is necessary to protect the interests of other students and staff.

Chapter 12 sets out a limited range of formal strategies that principals can use to impose discipline. It also contains few mechanisms that enable a principal to develop strategies cognisant of community expectations or tailored to meet the needs of individual students.

The absence of early intervention strategies in the current legislative framework has led to a strong reliance on suspension and exclusion options. However, principals have also raised concerns that the existing grounds for suspension and exclusion are not broad enough to enable them to respond to student misbehaviour in the way expected by their school communities.

The amendments proposed in the Bill address these limitations and align with the reforms under *Great teachers = Great results* to strengthen Queensland state school principals' disciplinary powers.

## **Achievement of policy objectives**

The Bill achieves its objectives by amending the EGPA as described below.

### Broadening discipline options and principals' powers

#### *Head of power for principals to control discipline*

The Bill inserts a general head of power into the EGPA that ensures state school principals have responsibility and power to control and regulate student discipline at their school. This provides principals with broad and flexible powers to implement discipline interventions and strategies in their school.

The general head of power clarifies that principals can implement a greater range of discipline strategies than those currently set out in chapter 12 of the EGPA. It also facilitates the development of disciplinary strategies that account for the needs and expectations of local school communities.

While the Bill does not prescribe the types of disciplinary interventions or how they are to be imposed, it will enable the Director-General of the Department of Education, Training and Employment (DETE) to make policies or procedures that provide guidance about how principals should control and regulate discipline. The policy and procedures will not be used to force particular disciplinary action on principals. Rather, they will guide principals to adopt appropriate processes that ensure adherence to natural justice principles and protect the safety and wellbeing of students and staff. The Bill clearly expresses the power to make policy or procedures about detention (conducted by principals or teachers), community service interventions, discipline improvement plans and other matters the Director-General considers appropriate. The Bill requires that principals comply with any policy or procedure made by the Director-General.

Community Service Interventions and Discipline Improvement Plans are two innovative discipline strategies principals can utilise under the general head of power. It is envisaged that these strategies may be used to address inappropriate student behaviour prior to resorting to suspension or exclusion. Community Service Interventions involve students performing work or service in their local community with a host organisation or under the supervision of a school staff member. They are designed to develop discipline by changing attitudes, improving skills, enhancing self-respect and respect for others through commitment and teamwork. Participation is dependent on the cooperation of students and parents.

A Discipline Improvement Plan is a written agreement that can be used at any time to prevent escalation of inappropriate behaviour by setting out strategies/steps for behaviour improvement. For example, a plan might involve commitment to regularly attend school or participate in a social skills initiative or a drug and alcohol education program. Discipline Improvement Plans are intended to be a flexible document that is adaptable to local contexts.

To maximise capacity of these interventions to change student behaviour, the Bill provides clear authority for Community Service Interventions, actions under a Discipline Improvement Plan and detention to be performed on a non-school day, for example a Saturday.

#### *Grounds for suspension and exclusion*

Through the introduction of more flexible early intervention approaches to addressing student misbehaviour, the Bill aims to reduce the number of students suspended or excluded from state schools. Suspensions and exclusion interrupt a student's education and can cause students to fall behind their peers academically. Consequences of a disrupted education include an increased likelihood to engage in antisocial behaviour and eventual school dropout.

Nevertheless, it is important that principals have the ability to remove students from schools in certain circumstances, for example where it is necessary to ensure the good order and management of the school and protect the safety and wellbeing of students and staff. In this regard, the Bill further strengthens principal's disciplinary powers by bolstering the existing grounds for suspension and exclusion. This addresses concerns raised by principals that the existing grounds for suspension and exclusion in chapter 12 of the EGPA are not broad

enough to enable them to respond to student misbehaviour in the way expected by their school communities.

The Bill will expand the grounds for suspension and exclusion to cover conduct occurring outside the school that adversely affects or is likely to adversely affect other students or the good order and management of the school; or where the student's attendance poses an unacceptable risk to the safety or wellbeing of other students or staff of the school.

The Bill strengthens a principal's ability to respond when a student is charged or convicted of a criminal offence with additional grounds of suspension and exclusion included specifically in relation to criminal charges and convictions. Previously these specific grounds only applied to mature age students. The Bill does not maintain this distinction.

The Bill includes new grounds for suspension of a student who has been charged with a serious offence or another offence in circumstances where it would not be in the best interests of other students and staff at the school for the student to attend the school while the charge is pending. A serious offence is an offence prescribed in the *Commission for Children and Young People and Child Guardian Act 2000*. This includes sexual offences such as rape, drug trafficking, armed robbery, torture, kidnapping and attempted murder. A suspension made on this basis lasts until the charge is 'dealt with' and a notice has been given proposing exclusion or ceasing the suspension, or until the principal or Director-General decides to exclude the student, or cease their suspension prior to the charge being 'dealt with'.

To ensure timeliness of decisions about suspensions upon charges, the Bill will require the principal to make a decision about whether to propose exclusion as soon as practicable after the charge has been dealt with.

The Bill includes a new ground for exclusion on the basis that a student has been convicted of an offence and it would not be in the best interests of other students or staff for the student to be enrolled at the school. This provides clear power to remove students (not only mature age students) from schools who have been convicted of an offence, but only if the student's continued enrolment is not in the best interests of the school community.

The powers to suspend and exclude a student are discretionary, i.e. there is no compulsion for the Director-General to exclude on the basis of a conviction or a charge.

#### *Increased powers for short term suspensions*

Principals can currently suspend a student for a 'short term' of up to five school days or a 'long term' of between six and 20 school days. As is the case currently under the EGPA, a student only has a right of review against long term suspensions. The Bill will increase the short suspension period from up to five school days to a period of up to 10 school days, making the long term suspension period 11 to 20 school days. This will act as a stronger deterrent for student misbehaviour and signal to students and parents the authority of principals in state schools.

#### Streamlining processes and reducing 'red tape'

#### *Suspensions, exclusions and cancellation of enrolment*

Currently exclusion decisions can be made by three categories of decision makers; principals,

principal supervisors and the Director-General. The Bill streamlines the legislation by removing provisions that allow for decisions to be made by the principal's supervisor. Principals will be responsible for exclusion decisions in their school. The Director-General will be able to make decisions about exclusion from the school the student is enrolled in, certain or all state schools. The Director-General will make decision about exclusion from the school the student is enrolled in if the principal and the Director-General reasonably believe it is appropriate, for example, where it would be inappropriate for the principal to exercise the power because of bias. The Director-General can delegate decisions to appropriate officers, including the principal's supervisor.

The Bill has removed the grounds for mature age students and applied new grounds to all students to ensure that principals can suspend or exclude a student in a wide range of circumstances irrespective of the age of the student.

The Bill simplifies suspension, exclusion and cancellation of enrolment processes and reduces associated red tape. For example, the Bill will not dictate how principals must communicate with students and their parents throughout suspension, exclusion and cancellation of enrolment processes. This provides principals with more flexibility to act in a way that is sensitive to individual circumstances.

The Bill enables suspensions to commence immediately upon telling the student. This facilitates immediate responses to student behaviour, with written notice to be provided as soon as practicable thereafter to confirm the nature of the decision.

The Bill will remove the requirement on a principal to invite written submissions prior to excluding a student. This reduces administrative processes prior to making a final decision to create more time for investigations and fact finding. The Bill will retain the right for a student or parent to review a final exclusion decision.

Guidance will be provided to principals in policy documents to ensure natural justice principles remain at the forefront of good decision making about disciplinary actions. The Bill requires that principals comply with Departmental policy and procedure.

#### *Removal of behaviour plans*

The Bill omits requirements in chapter 12 of the EGPA for principals to develop a behaviour plan for their school. Nevertheless, a behaviour plan will remain an essential management tool for school communities to agree on appropriate standards of behaviour. The requirement that schools have a plan that describes the proactive approach to managing behaviour is retained in DETE's new policy and procedure.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than through amendment to existing legislation.

## **Estimated cost for government implementation**

Any costs from implementation will be met from within existing resources.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### **Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992, sections 4(2)(a)***

The Bill may be argued to adversely affect the rights of students and parents as it expands disciplinary interventions, permits disciplinary measures to occur outside of school hours (e.g. detention and Community Service Interventions) and expands grounds for suspension and exclusion, including on the basis of charges and convictions for criminal offences.

These reforms are considered justified as a student's right to education must be balanced against the competing rights of other students, teaching staff and the broader school community to access and attend a safe, supportive and focussed learning environment. Disciplinary measures are necessary for the maintenance of the good order and management of the school. Published departmental policy and procedure will ensure appropriate measures are adopted to protect student safety and wellbeing during disciplinary interventions.

In recognition of a student's right to education, the Bill contains requirements to ensure continuing access to educational programs during both short and long suspensions.

The Bill does not alter current arrangements for students who are suspended with a proposal to exclude, whereby the principal or Director-General will take reasonable steps to ensure the student has an educational program and access to a regional case manager during the period of their suspension. Under DETE policy and procedure the case manager is responsible for engaging the student in an educational program after the exclusion decision has been made. The Bill also retains the requirement for the Director-General to take reasonable steps to provide an educational program for students who are excluded from all state schools.

The Bill also retains review rights for persons adversely impacted by long term suspensions, exclusions and cancellation of enrolment decisions.

- *Greater range of discipline strategies for principals*

The Bill inserts a general power into the EGPA that ensures state school principals have responsibility and power to control and regulate student discipline at their school. This enables principals to expand disciplinary interventions, and permits disciplinary measures to occur outside of school hours. This in turn provides principals with alternative and flexible disciplinary responses that may reduce reliance on suspension and exclusion processes. These can provide more meaningful consequences for student misbehaviour and act as real drivers for behavioural change.

The Bill enables the Director-General of DETE to make policies or procedures that provide guidance about how principals should control and regulate discipline. In addition, the Bill also requires that principals comply with any policy or procedure made by the chief executive. This ensures principals adopt appropriate processes that ensure adherence to natural justice principles and protect the safety and wellbeing of students and staff.

As a further safeguard, the policy and procedure must be available to the public for inspection and published on the department's website.

- *Suspension and exclusion*

The Bill expands the grounds for suspension and exclusion to cover behaviour or conduct occurring outside of the school that would adversely affect other students at the school, impact on the good order and management of the school, or where the student's attendance poses an unacceptable risk to the safety or wellbeing of students or staff. The new grounds will ensure a principal could act to ensure the safety and wellbeing of students.

The Bill also strengthens a principal's ability to respond when a student is charged or convicted of a criminal offence with additional grounds of suspension and exclusion included specifically in relation to criminal charges and convictions. Previously grounds relating to criminal offences only applied to mature age students; however, under the Bill this distinction is no longer maintained. Further, only the Director-General has the clear authority in the current EGPA to exercise exclusion on this basis. This expanded power is considered necessary to overcome existing limitations in the EGPA.

The Bill contains a power for principals to suspend a student who has been charged with:

- a. a serious offence as defined under the *Commission for Children and Young People and Child Guardian Act 2000*; or
- b. an offence (other than a serious offence) and the principal is reasonably satisfied it would not be in the best interests of other students or staff to attend the school while the charge is pending.

The amendment gives to the principal for the first time clear authority to respond to criminal activity (whether charges or convictions) and to act in the best interests of their school community. The inclusion of this power enables principals to take action considered necessary to protect the interests of students or staff.

The Bill provides that the suspension can last until the charge is 'dealt with' and the principal makes a decision to exclude. 'Dealt with' is defined to essentially mean until the charges are withdrawn or there is a verdict.

However, in the exercise of this power there are the following safeguards contained in the Bill regarding suspension on charge-related grounds:

- there is a discretion whether or not the principal exercises the power to suspend;
- a suspension on a charge-related ground may also cease prior to being dealt with if a notice ceasing suspension is given under new section 289 or the student is otherwise excluded or enrolment cancelled;
- new section 283 mandates that a decision be made about whether to exclude a student as soon as practicable after a charge is dealt with; and
- there is a right of review to the chief executive against the suspension.

Further, as stated above, the Bill contains requirements to ensure continuing access to educational programs.

The Bill also includes a new ground for exclusion on the basis that a student has been convicted of an offence and it would not be in the best interests of other students or staff for the student to be enrolled at the school. This provides the principal (and Director-General) with the clear power to exclude students, not just mature age students from schools, who have been convicted of certain offences but only if the student's continued enrolment is not in the best interests of the school community.

This additional requirement ("*not be in the best interests of other students or staff*") mitigates against the occurrence of unjust outcomes that may result if exclusion is based solely on conviction.

There are also safeguards contained in Bill such as discretion on the part of the decision maker (principal or chief executive) to exercise the power to exclude and a right of review of the decision to exclude. Again, the Bill contains an obligation to provide an educational program to the student during suspension pending an exclusion decision.

The Bill provides that exclusion decisions must be made within a stipulated timeframe - a decision of a principal within 20 school days, and a decision of the chief executive within 30 school days from the issue of the notice proposing exclusion. This is a significant change from the current EGPA and recognises that exclusion is a serious decision affecting a student's rights and that the student should be informed of the date when the decision is required. This amendment promotes effective and timely decision-making.

**Legislation should have sufficient regard to the rights and liberties of individuals -- rights of a person are affected by an administrative power subject to appropriate review - *Legislative Standards Act 1992, sections 4(3)(a)***

The Bill expands a principal's power to suspend students for short periods of up to 10 school days (currently it is five school days). The right of review to such decisions will be judicial review. It is recognised that the principal's increased powers to impose short term suspensions may mean more students are subjected to suspensions of up to 10 school days without a right of review apart from judicial review.

This potential breach of the FLP that rights of a person are affected by an administrative power subject to appropriate review is considered justified. The current legislation contemplates a non-review period as acceptable for a short period of time (i.e. up to 5 days). An extension of this period to 10 school days is not sufficiently long so as to offend principles of natural justice.

The Bill does not alter the current arrangements under the EGPA for long suspensions and final exclusion decisions (even those made by the Director-General) to be subject to review by the Director-General. This is consistent with current practice under the EGPA and recognises that the Director-General is best placed to make decisions about internal departmental management.

Finally, as in the case under the current EGPA, in circumstances where the Director-General has made a decision to exclude a student from all state schools, the most significant type of exclusion decision, external review to the Queensland Civil and Administrative Tribunal is available.



Judicial review will continue to be available for all decisions made under chapter 12 of the EGPA.

**Legislation should have sufficient regard to the rights and liberties of individuals – consistency with principles of natural justice – *Legislative Standards Act 1992*, sections 4(3)(b)**

To have sufficient regard to rights and liberties, legislation must have due regard to natural justice. The Bill removes some existing statutory natural justice requirements such as the:

- requirements for the principal to meet with parents before making a suspension decision;
- capacity for an affected student to make a written submission against a proposed exclusion decision; and
- show cause process prior to cancellation of enrolment of a student (who is above compulsory school age).

These changes are warranted on the basis that these requirements impose a regulatory burden on principals in situations where natural justice can be achieved in more flexible ways. The proposals do not aim to reduce rights, but rather to allow more flexible and timely approaches that suit individual family needs and school community needs and promote more informed decisions.

Natural justice principles will remain at the forefront of good decision making about disciplinary actions. The Bill requires principals to comply with DETE policy and procedure, which will ensure that decision makers follow due process and adhere to natural justice principles. Policy and procedure will outline best practice steps decision makers should take when choosing to apply a disciplinary measure. This will provide accountability and transparency to the decision making process, while giving flexibility to the approach adopted in a given situation.

The Bill retains the requirement to provide a notice of a suspension, exclusion and cancellation decision and the right to make a submission against a long suspension, exclusion and cancellation of enrolment.

## **Consultation**

An exposure draft of the Bill was released for targeted public consultation with the Queensland Secondary Principals' Association, Queensland Association of State School Principals, Queensland Association of Special Education Leaders, Outdoor and Environmental Education Centres Association, P-10/12 Principals' Association, P & Cs Qld (formerly, Queensland Council of Parents and Citizens Association) and the Queensland Teachers' Union. Stakeholders were invited to provide comment. Briefings were also provided to key stakeholders to receive verbal feedback and to facilitate more informed written feedback.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

## Notes on provisions

*Clause 1* provides that the short title of the Act is the *Education (Strengthening Discipline in State Schools) Amendment Act 2013*.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

*Clause 3* provides that the Act amends the *Education (General Provisions) Act 2006* (the EGPA).

*Clause 4* amends section 36 of the EGPA to clarify that the chief executive can use a person's criminal history obtained under chapter 2, part 5 of the EGPA for the purposes of chapter 12, part 3 and to provide that a principal of a state school can only use criminal history information obtained under chapter 2, part 5 of the EGPA for the purpose of making decisions regarding suspensions and exclusion of students under chapter 12, part 3, divisions 2 or 3. These are consequential amendments as a result of the Bill.

*Clause 5* amends section 37 of the EGPA to provide that the restrictions on disclosure of information obtained under chapter 2, part 5 of the EGPA do not apply to the disclosure of the information in certain circumstances, including to the principal of a state school in order for the principal to suspend or exclude a student under chapter 12, part 3, divisions 2 or 3. These are consequential amendments as a result of the Bill.

*Clause 6* makes consequential amendments to section 53 of the EGPA to reflect amendments made by the Bill to chapter 12.

*Clauses 7* and *8* make consequential amendments to sections 200 (Child's exclusion or suspension) and 237 (Suspension or exclusion) of the EGPA to reflect amendments made by the Bill to chapter 12.

*Clause 9* omits chapter 12, part 1 (Behaviour plans for State schools) from the EGPA and inserts a new part 1 (Student discipline).

New section 275 provides that the principal of a state school must control and regulate student discipline. This confirms a principal's authority in the school as to matters of school discipline and clearly gives a principal a broad flexible head of power to impose disciplinary interventions appropriate to the local circumstances. Subsection (2) further ensures principals have maximum flexibility in their responses to inappropriate behaviour by making it clear that discipline interventions can be carried out after school hours and on non-school days, for example Saturday detention.

New section 276 allows the chief-executive of DETE to make policy or procedure about the way in which principals of state schools are to control and regulate student discipline. Subsection (2) makes it clear a policy or procedure can be developed in relation to detention (issued by a principal or a teacher), Community Service Interventions and Discipline Improvement Plans. Subsection (3) requires the chief executive to make policies and procedures available for inspection. Subsection (4) requires that in relation to student discipline principals must comply with any such policy or procedure.

*Clause 10* omits chapter 12, part 2 (Detention of students enrolled at State schools) from the EGPA. Principals and teachers will rely on the broad head of power to impose detention in the future, guided by DETE policy and procedure.

*Clause 11* amends the heading for chapter 12, part 3 of the EGPA to remove the reference to behaviour improvement conditions. This is a consequential amendment due to the removal of behaviour improvement conditions from the chapter. *Clause 12* omits current chapter 12, part 3, divisions 1 to 3 (suspension and exclusion of students) from the EGPA and inserts the following new divisions:

#### Division 1 Preliminary

New section 280 provides relevant definitions for the operation of part 3.

#### Division 2 Suspension of students by principal

##### Subdivision 1 General provisions

New section 281 provides the principal of a state school with the head of power to suspend a student. The principal of a state school at which a student is enrolled may suspend the student from the school if reasonably satisfied a ground exists under section 282 for the suspension. Further, new subsection (2) makes it clear the principal may act under this division whether or not a student has already been suspended or excluded under this part.

New subsections 282(1) and (2) set out the various grounds for suspension under this division. The grounds are:

- disobedience by the student;
- misbehaviour of the student;
- conduct of the student that adversely affects, or is likely to adversely affect, other students;
- conduct of the student that adversely affects, or is likely to adversely affect, the good order and management of the school;
- the student's attendance at the school poses an unacceptable risk to the safety or wellbeing of other students or staff of the school;
- the student is charged with a serious offence;
- the student is charged with an offence other than a serious offence and the principal is reasonably satisfied it would not be in the best interests of other students or staff of the school for the student to attend the school while the charge is pending.

New subsection (3) clarifies that conduct of the student that may be ground for suspension does not have to happen on school premises or during school hours.

New subsection (4) provides that each of the grounds under subsection (1)(f) and (2) are to be termed a 'charge-related ground'.

New section 283 provides for the duration of a student's suspension and when the suspension starts. Subsection (1)(a) provides that generally suspension may be for not more than 10 school days. Although subsection (1)(b) provides that in certain circumstances (i.e. on a ground other than a charge-related ground and if the principal is reasonably satisfied the

ground is so serious that the suspension should be for more than 10 school days) suspension is for not more than 20 school days. Subsection (1)(c) provides that for a suspension on a charge-related ground the suspension continues until the charge is dealt with (as defined by section 280) and the principal makes a decision to exclude or not under section 288.

A suspension on a charge-related ground may also cease if, prior to being dealt with, a notice ceasing suspension is given under new section 289 or the student is excluded under sections 295, 302 or the student's enrolment is otherwise cancelled under section 316.

Section 283 requires a notice to be given about the suspension; and for suspensions for more than 10 school days or on a charge-related ground, the notice must state that the student may make a written submission against the suspension to the chief executive.

New section 284 requires that a principal who suspends a student must take reasonable steps to arrange for the student's access to an educational program that allows the student to continue their education during the suspension. The scope of the educational program provided will depend upon the length of the suspension.

New section 285 provides that a student may make a written submission to the chief executive about the suspension only if they are suspended for more than 10 school days or until a charge is dealt with. A note directs attention to section 331 (Parent may also make submission, representation or application).

New section 286 sets out how submissions against suspension must be dealt with.

#### Subdivision 2 Charge-related suspensions

New section 287 sets out that subdivision 2 applies if the principal has suspended a student on a charge-related ground.

New section 288 requires that as soon as practicable after a charge is dealt with, the principal must decide under section 293 whether to propose to exclude a student. The section requires that if the principal decides not to exclude the student, they must tell the student the suspension has ended (and then give notice).

New section 289 provides that if a student is suspended on a charge-related ground and prior to the charge being dealt with the principal is satisfied it would no longer not be in the best interest of other students and staff for the student to attend the school, the principal may end the suspension. New subsection (2) makes it clear that this is despite what is stated in section 283(1)(c).

#### Subdivision 3 Chief executive's powers

New section 290 enables the chief executive to exercise the powers of a principal under this division if the principal or the chief executive reasonably believes it would be appropriate to do so. An example of such circumstances is provided in the section. It would be appropriate for the chief executive to exercise the powers of a principal if the principal was prevented from doing so by the principles of natural justice relating to bias.

Division 3 Exclusion of students by principal

New section 291 provides the principal of a state school with the head of power to exclude a student. The principal of a state school at which a student is enrolled may, under this division, exclude the student from the school if reasonably satisfied a ground exists under section 292. Further, new subsection (2) makes it clear the principal may act under this division whether or not a student has already been suspended or excluded under this part.

New section 292 sets out the grounds for excluding a student under this division. These are:

- persistent disobedience by the student;
- misbehaviour of the student;
- conduct of the student that adversely affects, or is likely to adversely affect, other students;
- conduct of the student that adversely affects, or is likely to adversely affect, the good order and management of the school;
- the student's attendance at the school poses an unacceptable risk to the safety or wellbeing of other students or staff of the school.

Subsection (1) provides that each of these is a ground for exclusion only if suspension of the student from a school under division 2 is inadequate to deal with the disobedience, misbehaviour, conduct or risk.

Subsection (2) provides that it is also a ground for exclusion under this section if the student has been convicted of an offence; and the principal is reasonably satisfied it would not be in the best interests of other students or staff for the student to be enrolled at the school.

Subsection (3) clarifies that conduct of the student that may be a ground for exclusion does not have to happen on school premises or during school hours.

New section 293 applies if the principal is reasonably satisfied a ground exists to exclude a student from the school and proposes to exclude the student. Subsection (2) requires that the principal must give the student a notice in the approved form about the proposed exclusion and if the student is already suspended, tell the student the suspension continues until a final exclusion decision is made, or suspend the student pending the making of the final decision about the exclusion. Subsection (3) makes it clear that the suspension commences when the principal tells the student about the suspension.

New section 294 requires a principal who suspends a student under section 293 to take reasonable steps to arrange for the student's access to an educational program that allows the student to continue the student's education during the suspension.

New section 295 requires that the principal must make a final decision about whether to exclude or not exclude the student within 20 school days after giving the proposed exclusion notice and prescribes the process for making the decision and informing the student. The section provides that the exclusion can be for a period of not more than one year or permanently and that the time period of exclusion cannot exceed the period stated in the proposed exclusion notice under section 293.

New section 296 provides that if a student is excluded under this division, the enrolment is taken to be cancelled.

New section 297 enables the chief executive to exercise the powers of a principal under this division if the principal or the chief executive reasonably believes it would be appropriate to do so. An example of such circumstances is provided in the section. It would be appropriate for the chief executive to exercise the powers of a principal if the principal was prevented from doing so by the principles of natural justice relating to bias.

Division 4 Exclusion of students from certain State schools or all State schools by the chief executive

New section 298 provides the chief executive with the head of power to exclude a student from certain state schools, or all state schools, if reasonably satisfied a ground exists under section 299. Further, new subsection (2) makes it clear the chief executive may act under this division whether or not a student has already been suspended or excluded under part 3. This will ensure the chief executive can exclude the student from certain schools or all schools despite the fact the student has already been suspended or excluded from the school at which they were enrolled.

New section 299 subsections (1) and (2) set out the grounds for excluding a student under this division as:

- persistent disobedience by the student;
- misbehaviour of the student;
- conduct of the student that adversely affects, or is likely to adversely affect, other students;
- conduct of the student that adversely affects, or is likely to adversely affect, the good order and management of the school;
- the student's attendance at the school poses an unacceptable risk to the safety or wellbeing of other students or staff of the school.

Subsection (1) provides that each of the above is a ground for exclusion under this division only if exclusion of the student from a school under division 3 is inadequate to deal with the disobedience, misbehaviour, conduct or risk.

Subsection (2) provides that it is also a ground for exclusion under this section if (a) the student has been convicted of an offence; and (b) the chief executive is reasonably satisfied it would not be in the best interests of other students or of staff for the student to be enrolled at the schools.

Subsection (3) clarifies that conduct of the student that may be ground for exclusion does not have to happen on school premises or during school hours.

New section 300 applies if the chief executive is reasonably satisfied a ground exists to exclude a student from certain state schools or all state schools and proposes to exclude the student from the schools. Subsection (2) provides that the chief executive must give the student a notice in the approved form about the proposed exclusion and suspend the student (or, if the student is already suspended or excluded – continue the suspension or exclusion) from the schools pending the making of the final decision about the proposed exclusion.

Subsection (3) makes it clear that the suspension commences when the chief executive tells the student about the suspension.

New section 301 requires that if a student is suspended under section 300, the chief executive must take reasonable steps to arrange for the student's access to an educational program that allows the student to continue the student's education during the suspension.

New section 302 requires that the chief executive must make a final decision about excluding the student from the schools within 30 school days after giving the proposed exclusion notice and prescribes the process for making the decision and informing the student. The section provides that the exclusion can be for a period of not more than one year or permanently and that the time period of exclusion cannot exceed the period stated in the proposed exclusion notice in section 300(2).

New section 303 provides that if a student is excluded under this division from a state school at which the student is enrolled, the enrolment is taken to be cancelled.

New section 304 provides for the continuing education of certain excluded students. The section applies to a student of a state school who is of compulsory school age or a young person in the compulsory participation phase and who is excluded under the division from all state schools. Subsection (2) requires the chief executive to take reasonable steps to arrange for the student's access to an educational program that allows the student to continue the student's education during the exclusion.

*Clause 13* makes a consequential amendment to renumber chapter 12, part 3, divisions 4 to 6 as divisions 5 to 7.

*Clause 14* makes a consequential amendment to the heading of section 305 of the EGPA to renumber the reference to division 4 as division 5 as a result of the renumbering of divisions.

*Clause 15* makes consequential amendments to section 309 of the EGPA as a result of the renumbering of divisions.

*Clause 16* makes consequential amendments to section 311 of the EGPA as a result of the renumbering of divisions.

*Clause 17* makes a consequential amendments to section 312(2)(a) of the EGPA as a result of the new divisions inserted by clause 12.

*Clause 18* makes consequential amendment to section 313 of the EGPA as a result of the new divisions inserted by clause 12.

*Clause 19* makes consequential amendment to section 315 of the EGPA as a result of the new divisions inserted by clause 12.

*Clause 20* omits chapter 12, part 3, division 7 (Cancellation of enrolment of students of more than compulsory school age) and division 8 (Behaviour improvement conditions) from the EGPA, as in force immediately before the commencement. With respect to Behaviour improvement conditions, principals will rely on the broad head of power to impose discipline improvement plans, guided by DETE policy and procedure.



The following new division is inserted:

Division 8 Cancellation of enrolment of students who are older than compulsory school age

New section 316 provides a principal with the head of power to cancel the enrolment of a student who is older than compulsory school age if reasonably satisfied that the ground under section 317 exists. Subsection (2) ensures that the enrolment of a student of compulsory school age can not be cancelled under this division.

New section 317 specifies that for section 316 the ground for cancellation of enrolment is that the student's behaviour amounts to a refusal to participate in the educational program provided at the school.

New section 318 applies if the principal cancel the enrolment of a student under section 316(1). Subsection (2) outlines the notice requirements and information a principal must give about the cancellation. Subsection (3) provides that a student who receives a cancellation notice cannot make an application for enrolment at the school during the period stated in the notice. The period cannot be more than 12 months after the giving of the notice.

New section 319 provides that a student may make a written submission against a cancellation to the chief executive. The section also outlines what the submission should address. A note directs attention to section 331 (Parent may also make submission, representation or application).

New section 320 sets out how submissions against a cancellation of enrolment must be dealt with.

*Clause 21* makes a consequential amendment to section 328 of the EGPA to renumber a reference to division 7 as division 8 as a result of the new division inserted by clause 19.

*Clause 22* amends section 329 to allow for enrolments at other state schools during periods of suspension under this part if approved by the chief executive. This amendment alters the current position under section 329 that there is no entitlement to enrolment at another state school during a period of suspension. The amendment permits flexibility in dealing with student's circumstances in providing access to educational programs, particularly for those students who may be subject to suspension while waiting the finalisation of a criminal charge. One option for such students is enrolment in the school of distance education.

*Clause 23* amends the heading of section 331 of the EGPA to better reflect the operation of the section that parents may make submissions, representations or applications about the suspension, exclusion or cancellation of enrolment of a student. The clause also makes consequential amendments as a result of the new divisions inserted by clause 12.

*Clause 24* makes consequential amendments to section 332 as a result of the new divisions inserted by clause 12.

*Clause 25* makes consequential amendments to section 362 of the EGPA as a result of the omission of chapter 12, part 2 (Detention of students enrolled at State schools) and the inclusion of new sections 275 and 276. Principals will rely on the broad head of power to impose disciplinary interventions appropriate in the circumstances of non-compliance with a state school dress code. However the section ensures part 3, divisions 2 to 4 and 8 do not

apply to noncompliance with the dress code. This will continue to ensure students are not subject to suspension, exclusion or cancellation of enrolment as a discipline for noncompliance with dress codes.

*Clause 26* makes consequential amendments to the heading of chapter 15, part 4 of the EGPA as a result of the new divisions inserted by clause 12.

*Clause 27* makes consequential amendments to section 401 of the EGPA as a result of the new divisions inserted by clause 12.

*Clause 28* inserts a new part 7 into chapter 20 of the EGPA (sections 516 to 526) to provide transitional provisions for the *Education (Strengthening Discipline in State Schools) Amendment Act 2013* (the amending Act).

New section 516 provides definitions of terms for the new part 7.

New section 517 ensures that existing policy or procedure made by the chief executive about the way principals of state schools control and regulate student discipline are taken to be policy or procedure made by the chief executive under new section 276.

New section 518 ensures that the pre-amended EGPA continues to apply to decisions about suspensions made prior to commencement.

New section 519 ensures that the pre-amended EGPA continues to apply to students given a notice proposing exclusion and suspended prior to commencement.

New section 520 provides that if a student was excluded by a principal under the pre-amended EGPA (section 288F) the student is taken to be excluded under new section 295. This ensures student review rights are not affected by allowing reviews to take place under the amending Act.

New section 521 ensures that the pre-amended EGPA applies to recommendations for exclusion and suspension made by a principal to the principal's supervisor prior to commencement.

New section 522 provides that if a student was excluded by a principal's supervisor under the pre-amended EGPA (section 293), the student is taken to be excluded under new section 295(3). This ensures student review rights are not affected by allowing reviews to take place under the amending Act.

New section 523 ensures that the pre-amended EGPA continues to apply to students given a notice by the chief executive proposing exclusion and suspended prior to commencement.

New section 524 provides that if a student was excluded by a chief executive under the pre-amended EGPA (section 302), the student is taken to be excluded under new section 302. This ensures student review rights are not affected by allowing reviews to take place under the amending Act.

New section 525 ensures that the pre-amended EGPA applies to a show cause notice given to a student under section 317 prior to commencement.

New section 526 provides that if a student's enrolment was cancelled under the pre-amended EGPA (section 320) the student's enrolment is taken to be cancelled under new section 316(1). The notice given to the student under the pre-amendment EGPA (section 320(4)) is taken to state the matters mentioned in new section 318(2). This ensures student review rights are not affected by allowing reviews to take place under the amending Act.

*Clause 29* makes consequential amendments to the schedule 4 Dictionary of the EGPA to omit and insert certain definitions as a result of the Bill.

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