



Department of  
Education

**Shaping the future**

# Discussion Paper

## Review of the *School Education Act* 1999

7 August 2024



# Contents

<b>Part 1 - Introduction</b> .....	<b>4</b>
Acknowledgment of Country.....	4
Message from the Minister .....	4
What is this paper?.....	5
What is a review? .....	5
What is the <i>School Education Act 1999</i> ? .....	5
What is in the SE Act.....	5
What is not in the SE Act.....	6
Why is this review happening? .....	6
How is the review happening?.....	6
How you can be involved.....	7
What we want to hear from you .....	7
Options for giving your feedback .....	8
Timeframe for giving feedback .....	8
How your feedback will be used .....	8
How to read the Discussion Paper .....	9
The options.....	9
Other documents to keep nearby .....	9
Referencing .....	9
Helpful information to consider before you provide a submission.....	9
Human rights .....	9
National legislation .....	10
<b>Part 2 - List of all questions</b> .....	<b>11</b>
<b>Part 3 - Detail on the key issues and questions</b> .....	<b>13</b>
1. Setting the tone .....	13
Objects .....	13
Principles.....	14
Definitions.....	16
2. Getting started.....	17
Enrolment.....	17
Options for engagement.....	19
3. School life.....	20

Roles and responsibilities .....	20
Right to adjustments and learning in the same classroom .....	22
Communication/consultation .....	24
4. When school is not going well .....	25
Discipline, suspensions and exclusions.....	25
Restrictive practices .....	27
Disability Advisory Panel and Discipline Advisory Panel .....	28
Disputes and complaints .....	29
Making sure we continue to improve .....	31
<b>Appendices A.....</b>	<b>32</b>
Key terms and acronyms .....	32

# Part 1 - Introduction

## Acknowledgment of Country

The Western Australian Government respectfully acknowledges the Traditional Owners of the lands, sea, and waters. We respect the rich and continuous sharing of knowledge through language, song, rituals, and stories for tens of thousands of years.

## Message from the Minister

The WA Government is committed to supporting children and young people with disability in their education.



I believe every child and young person with disability has the right to a quality education where they feel valued, included and supported to reach their full potential.

Recent inquiries such as the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability have highlighted the need for change to make sure people with disability are fully included in all aspects of society.

I believe education plays an important role in this change.

In order to have an inclusive society where all people can reach their potential – and to support the growth of children and young people - we need an education system that fosters respect, values diversity, and embraces and accommodates difference.

The *School Education Act 1999* was drafted over 25 years ago, and I know there have been occasions when students with disability and their families have been let down by the education system.

This Discussion Paper invites you to share your ideas for how the *School Education Act 1999* could be changed to improve access and inclusion for students with disability.

## What is this paper?

Every child and young person with a disability has a right to a quality education where they feel valued, are included, and are supported to reach their full potential.

On 4 December 2023, the Minister for Education announced a review of the *School Education Act 1999* (SE Act) to identify ways to strengthen access and inclusion for students with disability.

This paper is part of the review. It is the review's Discussion Paper and aims to explore which areas of the SE Act make it hard for students with disability to be fully included and asks for your ideas on how this could be changed.

## What is a review?

A review of legislation does not change legislation. A review is a process to explore research, experiences and ideas and then make suggestions for change.

A review ends with a final report. For this review, we will give a final report to the Minister for Education. The report will have recommendations for how the SE Act could be changed.

It is then up to the Minister, Cabinet and Parliament to decide if the SE Act is changed and how it is changed. Changing laws is a detailed process. It involves many steps and approvals and often takes years. At the end of the process policies will often need to be updated too so they align to the laws.

## What is the *School Education Act 1999*?

### What is in the SE Act

The SE Act is a set of laws for how children and young people in WA access education during the compulsory education years.

It sets out how schools are set up and what is needed for enrolling and attending. This includes the options for education through a government school, non-government school or through home education.

The SE Act also sets out options for children and young people to study non-school courses in the final years of compulsory education, such as, VET courses, apprenticeships or higher education.

The SE Act also covers how lots of different processes work in government schools (also classed public schools), like suspensions, exclusions, key decisions, and complaints handling.

For non-government schools, which are sometimes called private schools, the SE Act sets out how these schools are registered and a process for making standards that they must follow.

## What is not in the SE Act

There are lots of things about schools that are not part of the SE Act. These things are not relevant to this review. Things not in the SE Act and not relevant to this review include:

- funding for schools or individual students
- teacher training
- curriculum / what is taught in schools
- bullying
- class sizes.

Even though some of these things may be very important to you, they are not part of the scope of this review, so we cannot act on any feedback you give us about them.

## Why is this review happening?

The SE Act was written over 25 years ago and is now outdated. It no longer reflects the current understanding of, and community expectations for students with disability.

This review aims to find out how we can change the SE Act to better include children and young people with disability so that they can access a quality education where they feel valued, are included, and are supported to reach their full potential.

## How is the review happening?

The review started in January 2024 and is being coordinated by the Department of Education, and led by 2 key groups: an expert panel and an advisory council.

The expert panel has 7 members chosen for their skills, knowledge, and personal experiences. They understand laws for accessible and inclusive education, human rights, and best practice for making education accessible and inclusive.

The advisory council has 8 members who have personal experience with intellectual disability and are experts in advocacy.

The expert panel and advisory council are leading the review across 3 key phases:

- 1. Research** – the research phase is complete. It involved exploring:
  - what children, families, and educators have already shared in various reports and studies across Australia
  - what can be learned from other regions in Australia and overseas
- 2. Consultation** – the consultation phase is now. It involves:
  - putting the main ideas from the research into this Discussion Paper
  - getting community feedback on the Discussion Paper
- 3. Findings and recommendations** – this phase will involve:
  - analysing everything we learn during the consultation
  - summarising the findings into a final report to the Minister

This final report will recommend ways the Minister can improve the SE Act. The report will be ready by the end of 2024 and will be for the Minister only, so it will not be shared with the public.

**The expert panel members are:**

- Professor Andrew Whitehouse (Chair)
- Dr Sarah Bernard
- Kane Blackman
- Charmaine Ford
- Cátia Malaquias
- Maria Mansour
- Anna Steele

**The advisory council members are:**

- Michelle Silver (Chair)
- Peter Bluett
- Kyal Fairbairn
- Liam Flynn
- Kristy Marsiglia
- James McNulty
- Shariq Sharma
- Justin Storen

## How you can be involved

### What we want to hear from you

We want to hear from everyone who wants to have a say. We want to know:

- your ideas for how the SE Act could be improved
- how you think your ideas will help to include students with disability

We would like your feedback on 13 questions. You can find these at Part 2, on page 10. You can answer as many or as few questions as you like. You may want to raise an issue with the SE Act that is not covered in this Discussion Paper- that is okay too.

If you feel comfortable, please tell us some information about yourself. This will help us to understand common concerns and know if we have heard from a diverse range of people or have missed important voices in the community.

For example, you may like to tell us if you are:

- a person with a disability
- a child, parent or sibling of someone with disability
- an education assistant, teacher or principal
- whether your feedback relates to a government school (often called ‘public schools’), a non-government school (often called ‘private schools’) or home education (often called ‘home schooling’).

## Options for giving your feedback

There are a few options for how you give your feedback. You can:

- answer some or all of the questions through an online form found here <https://www.education.wa.edu.au/web/education-act-sector-review>
- email a submission to [SEA.Review.Secretariat@education.wa.edu.au](mailto:SEA.Review.Secretariat@education.wa.edu.au)
- post a written submission to Department of Education  
School Education Act Review  
Strategy and Policy  
151 Royal Street  
East Perth WA 6004
- speak to someone on the phone between 9.00am to 4.00pm Monday to Friday by calling 0475 822 007.

We want to hear from you, so if you have any questions or would like to make a submission in a different way, please contact us on 0475 822 007 or send an email to [SEA.Review.Secretariat@education.wa.edu.au](mailto:SEA.Review.Secretariat@education.wa.edu.au)

## Timeframe for giving feedback

You can give us your submissions from **16 August 2024 to 4 October 2024**. Please call 0475 822 007 or send an email to [SEA.Review.Secretariat@education.wa.edu.au](mailto:SEA.Review.Secretariat@education.wa.edu.au) if you need more time.

## How your feedback will be used

The consultation phase is about gathering feedback.

The Department of Education will review all feedback and share the findings with the expert panel and advisory council. The expert panel and advisory council will use these findings to decide the final recommendations for changes to the SE Act.

It is important for you to know:

- we will not be able to reply to your submission
- any information you provide can be subject to freedom of information requests, which we must comply with by law
- your feedback will inform a final report to the Minister for Education. This report is for the Minister only, so will not be publicly released.



# How to read the Discussion Paper

## The options

There are a few different options for reading this Discussion Paper.

There are 3 parts to the Discussion Paper:

- Part 1: this helps give some background to the review of the SE Act and this Discussion Paper
- Part 2: this lists the 13 questions we have for you
- Part 3: this gives a lot more detail on each of the topics related to the 13 questions.

We recommend that everyone reads Part 1.

If you only want to see the questions we have for you, read Part 2. If you want more detail on any of the topics relating to the questions, read Part 3. You can check the headings in Part 3 to find the areas where you want more information.

If you prefer not to read this whole paper, you might want to look at the Easy Read version or watch some of the videos about the review, which you can find on the website <https://www.education.wa.edu.au/web/education-act-sector-review>.

## Other documents to keep nearby

Appendix A lists the key terms and acronyms used in this paper. You may want to refer to this as you read the paper.

You may also wish to have a copy of the SE Act open when reading this paper. You can access a word version or PDF version the SE Act by clicking [here](#).

## Referencing

Footnotes and EndNote are not accessible to many people, so the Discussion Paper lists references in “Things to think about” boxes.

# Helpful information to consider before you provide a submission

## Human rights

Australia has ratified 2 key legally binding human rights treaties that are relevant to the education of students with disability. These are the United Nations Convention on the Rights of the Child (CRC) and the United Nations Convention on the Rights of People with Disability (CRPD).

The recent Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (from now on referred to as the Disability Royal Commission) raised that Western Australian should review its education laws and policies to see how well they take account of and apply human rights.

## National legislation

The SE Act is not the only set of laws that affects how schools operate in WA.

All schools in Australia must follow national laws made by the Australian Government. One important law is the *Disability Discrimination Act 1992 (Cth) (DDA)*. This Act lets the Attorney General of Australia create rules, called the Disability Standards for Education 2005 (DSE), which set a standard that every school in Australia must meet.

Each state and territory can decide how to address these standards in their own laws. There are 3 options:

1. They can leave out the parts that are already covered by the DSE
2. They can copy exactly what is in the DSE or refer to the DSE/DDA
3. They can make their own laws that go beyond what is in the DSE – this means setting a higher standard

This is important to note when thinking about changes to the SE Act. The SE Act cannot set a lower standard than the DSE, but it can include the DSE standards or set a higher standard (e.g. build on top of the DSE standards) for Western Australian schools.

# Part 2 - List of all questions

We have 13 questions where we want to hear your thoughts and ideas. You may choose to answer none, some, or all these questions.

We have listed the questions below.

Part 3 of the Discussion Paper will give you more information about why we are asking each question. It also outlines what we have learnt from our research for each question.

## Questions

1. Should the objects of the SE Act be changed to improve access and inclusion for students with disability? If so, what should this look like?
2. Should principles be added to the SE Act to improve access and inclusion? If so, what principles would you add?
3. Should the definition of disability in the SE Act be changed to improve access and inclusion? If so, how?
4. Should the SE Act change so that there is a clear right for students with disability to enrol at their local government school?
5. Should the SE Act provide greater flexibility in how students engage in education? If so, what should this look like?
6. Should there be any changes to the SE Act regarding roles and responsibilities? If so, what should this look like?
7. Should there be any changes to the SE Act regarding adjustments for students with disability and/or universal measures? If so, what should this look like?
8. Should there be any changes to the SE Act regarding duties to communicate, consult and/or collaborate with students with disability and their parents. If so, what should this look like?
9. Should there be any changes to the SE Act regarding discipline, suspensions or exclusions? If so, what should this look like?
10. Should there be any changes to the SE Act (or regulations) regarding restrictive practices? If so, what should this look like?
11. Should there be any changes to the Disability Advisory Panel and/or Discipline Advisory Panel sections of the SE Act? If so, what should this look like?

12. Should the SE Act change so complaints are handled in a different way? If so, what should this look like?

13. With all the changes you have suggested in mind, how can the government monitor what is happening and show things are improving?

# Part 3 - Detail on the key issues and questions

The SE Act has provisions that influence a child's entire journey in the education system. This Discussion Paper divides this journey under 4 headings:

1. **Setting the tone:** things that affect the whole SE Act and work together to shape how the law is understood and applied, such as the objects, principles, and definitions
2. **Getting started:** how children and young people enrol in school and options for attending school or other education settings
3. **School life:** the powers and responsibilities of teachers and principals; when and how schools communicate with students and their families; and how schools support students who need adjustments or supports to get the most out of school
4. **When school is not going well:** how schools handle discipline, complaints and disputes, and the role of Disability Advisory Panels.

## 1. Setting the tone

### Objects

Objects give a broad overview of the purpose of an Act and what it hopes to achieve. They help to guide how to interpret and apply an Act.

### What is in the SE Act

Section 3 of the SE Act outlines the objects. They are mainly about providing education to children during their compulsory school years. They also acknowledge the importance of involving a child's parents.

### What other sources say

Other Australian States and Territories and other countries have objects in their equivalent education laws that refer to:

- inclusion
- responding to the needs of individual children and young people
- flexibility
- supporting all children and young people to reach or maximise their potential
- providing students with skills and capabilities to fully participate in society and their communities.

## Question

1. Should the objects of the SE Act be changed to improve access and inclusion for students with disability? If so, how?

## Things to think about

- Look at section 3 of the SE Act
- Do the objects support students with disability being included and getting the most out of their education?
- You could also look at the objects in the education laws of other places (listed below) and see if you think the SE Act should have something similar.

## Key references:

- *Education Act 2015* (Northern Territory) – see section 3
- *Education and Training Act 2020* (New Zealand) – see sections 4 and 32
- *Education (General Provisions) Act 2006* (Queensland) – see section 5
- *Education Act 2016* (Tasmania) – see section 3
- Portugal's Decree-Law No 54/2018

## Principles

Acts often include principles. They are the core values that inform the purpose and intent of an Act. They are used to guide how an Act is meant to be interpreted. An Act with principles will usually say that anyone performing a function under the Act must follow the principles.

## What is in the SE Act

The SE Act does not have any principles.

## What other sources say

Article 24 (and General Comment 4) of the CRPD talks about the human right to education says that:

- all students, including those with disability have the right to inclusive education
- inclusive education helps all students to learn important life and social skills so they can reach their potential and fully take part in community life
- the right to an education is a human right of the child, and parents' responsibilities and choices about a child's education come second to the human rights of a child to an education.

In many other Australia states and territories, and in some other countries, the education laws include principles. These principles include reference to:

- universal access to education
- recognising individual needs of children and young people
- involving children and young people in decisions that affect them
- working together with parents and school communities

- believing that all children and young people deserve an education and are able to learn
- providing education based on positive learning experiences
- supporting and promoting the principles of Australian democracy including a commitment to the values of openness and tolerance
- including students with disability and their entitlement to adjustments.

Section 5 of the *WA Teacher Registration Act 2012* sets a principle for that Act. Section 5 states that a person with functions under that Act must consider the best interests of children as the most important thing when carrying out their role under the Act.

Another principle-based position in WA is action 1.4 under Western Australia for Everyone: State Disability Strategy 2020-2030, Second Action Plan. Action 1.4 *Principles of inclusive education* is about strengthening inclusion in public schools and reflecting the principles of inclusive education in education services, programs and facilities.

### Question

2. Should principles be added to the SE Act to improve access and inclusion? If so, what principles would you add?

### Things to think about

- You could look at the principles in other education laws (listed below) and see if you think the SE Act should have something similar.

### Key references

- *Education Act 2015* (Northern Territory) – see section 4
- *Education (General Provisions) Act 2006* (Queensland) – see section 7
- *Education Act 2016* (Tasmania) – see section 4
- *Education Act 1990* (New South Wales) – see section 4
- *Education and Training Reform Act 2006* (Victoria) - see section 1.2.1
- Portugal's Decree-Law No 54/2018

## Definitions

Definitions determine the scope of key terms in an Act.

### What is in the SE Act

The SE Act's key terms and definitions are outlined in section 4.

The SE Act currently defines the term *disability*. This term is used for various provisions under the SE Act which are meant to apply to students with disability- such as sections 73, 84, 86 and 92.

Under the SE Act, disability is defined using a medical model and is limited to conditions that are permanent.

The medical model looks at disability as a problem with the person. It thinks of physical, mental, or sensory differences as deficits or things that need to be fixed or managed with medical care or healthcare.

People with disability have challenged this medical model perspective for many years. Instead of the medical model, many people with disability prefer to use a social model, to better explain their experiences of disability. The social model looks at the barriers people with disability face because society does not accommodate their physical, mental or sensory characteristics. It then focuses on what we can do to change attitudes and environments, to accommodate for different human characteristics so that people with disability face fewer barriers and can join in society like everyone else.

The models we use to define disability can make a big difference to how we understand people with disability, what they need and what our role is to help them to join in.

The SE Act's definition of disability is different from the one used by the DDA (and DSE). The DDA definition is broader, includes temporary disability, and has some parts that focus more on the social model, but it still mostly views disability through a medical model. These differences can be confusing for WA schools as schools must be aware of when they must use the DDA/DSE definition and when they must use the SE Act's definition.

### What other sources say

Because people understand disability in different ways, there are many different definitions of it in Australian and around the world. Some places around the world do not define the term disability at all, and instead view disability as part of human diversity, where everyone has different characteristics and, therefore, different needs. This idea recognises that people with disability are not a single group of people and promotes a more inclusive approach that also considers other attributes a person may have like culture, language, gender, socioeconomic status, sexual orientation, which can affect a person's experiences and needs.

The CRPD does not agree with the 'medical model' approach and sees physical, mental or sensory differences as part of human diversity. It views the experience of



disability as something that happens when people with impairments face attitudes and environments that stop them from fully taking part in society like everyone else. Under the CRPD, disability and impairment are not the same thing.

In 2022 the Law Reform Commission of WA recommended that the *Equal Opportunity Act 1984* (WA) should use the term 'disability' instead of 'impairment' and define it in a way like the DDA definition. Although the DDA definition is broader than the SE Act definition, both still follow the 'medical model' approach and neither is well aligned with the CRPD.

### Question

3. Should the definition of disability in the SE Act be changed to improve access and inclusion? If so, how?

### Things to think about

- Look at the definition of disability in section 4 of the SE Act.
- Do you think the SE Act's definition of disability should be changed to better match the CRPD? Or the DDA?
- Do you think the SE Act even needs a definition of disability? Could it just focus on diversity and responding to student differences and needs without needing to specify disability?

### Key references:

- CRPD – see Article 1
- Portugal's Decree-Law No 54/2018
- *Education Act 1997* (New Brunswick, Canada)
- Law Reform Commission of WA Project 111 Final Report - See recommendation 2

## 2. Getting started

### Enrolment

#### What is in the SE Act

Under section 78 of the SE Act, a child's right to enrol at their local government school is limited by 2 things:

- 1) the child lives within the local intake/catchment area; and
- 2) the school has an appropriate educational programme.

The term 'Appropriate educational programme' is sometimes used to decide if a child with disability can enrol at their local government school. This means that enrolment can be limited based on a child's disability.

WA is the only state/territory in Australia where the law restricts enrolment at the local government school based on whether an 'appropriate educational programme' is available there.

### **What other sources say**

The CRPD clearly says that children with disability must not be excluded from the general education system based on disability. They should be able to access the schools in the communities in which they live, and these schools should be inclusive.

There are 4 other human rights documents that are relevant to enrolment as they say that all people have a right to protect and practise their culture, religion and language. This also means children should be able to enrol in schools which provide an education in their own language, beliefs and culture.

The DDA and WA's *Equal Opportunity Act 1984* (WA) say that it is unlawful for schools to refuse admission or limit benefits to students because of their disability. In 2022, the Law Reform Commission of WA suggested changing the *Equal Opportunity Act 1984* (WA) to make it clear that it is also unlawful to discriminate when evaluating and selecting student applications.

The Disability Royal Commission recommended that all states and territories should change their laws to ensure students with disability have the right to enrol in their local mainstream school. The only reason a school could refuse enrolment, is if it causes "unjustifiable hardship", as explained in the DDA.

### **Question**

4. Should the SE Act change so that there is a clear right for students with disability to enrol at their local government school?

### **Things to think about**

- Look at section 78 of the SE Act.
- Do you think the limitations on enrolment are barriers to access and inclusion?
- Do you think children with disability should also have a right to be able to enrol at a non-government school that reflects their beliefs, religion or language?

### **Key references:**

- CRPD – see Article 24 and General Comment 4
- LRCWA Project 111 Final Report - see recommendation 58
- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – see Recommendation 7.1
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities – see Articles 2 and 4
- International Covenant on Economic, Social and Cultural Rights – see Article 13
- International Covenant on Civil and Political Rights – see Article 18
- United Nations Declaration on the Rights of Indigenous Peoples – see Article 14

## Options for engagement

### What is in the SE Act

The SE Act says that every child must be enrolled in some kind of educational programme for every year of their compulsory education period. This can be achieved by enrolling at a school, home education, or, in the final years of compulsory education, by doing an apprenticeship, higher education, a VET course, or approved employment. However, the SE Act does not allow a child to be enrolled in both home education and school at the same time or to be enrolled part-time.

Section 23 of the SE Act says that school attendance must be full-time unless the principal and the parent make a special arrangement under section 24. This full-time requirement also applies to students who choose to do an apprenticeship or higher education in their final years.

### What other sources say

The idea of flexible learning options for students with disability is complicated. Many reports and inquiries highlight the need for flexible learning arrangements.

In March 2024, the Education and Health Standing Committee of the WA Parliament released a report called *A Different Kind of Brilliance: Report of the Inquiry into Support for Autistic Children and Young People in Schools*. The inquiry found that flexible arrangements for autistic students can help them stay engaged in education. However, many schools are either unwilling to consider these arrangements or are unsure about their authority to approve them. The report recommended providing schools with clear guidelines on approving flexible attendance and subject loads for autistic students who need them.

In August 2023, the Education and Employment References Committee of the Australian Parliament released a report called *The National Trend of School Refusal and Related Issues*. The report found that school refusal, also called "school can't" is most common among students with disability. The Committee recommended that State and Territory education authorities and non-government schools find ways to make education more flexible. The recommendations included making mainstream schools more adaptable and making it easier for students facing school refusal to access distance education and home schooling.

Both Portugal and Italy have laws that allow for timetabling as a form of adjustment as part of individual education plans for students with disability. These adjustments are for set periods only and have mandatory review and oversight.

It is important to note that while flexibility can be helpful, it can also be risky. Parents of children and young people with more complex needs might be encouraged to have their child spend less time at school to make things easier for the school. To discourage this, New Zealand's laws specify that all students have the right to attend school for all the hours it is open.

## Question

5. Should the SE Act provide greater flexibility in how students engage in education? If so, what should this look like?

### Things to think about

- Look at sections 9, 10, 11B, 23 and 24 of the SE Act – do they have any barriers to access and inclusion?
- How would greater flexibility improve access and inclusion for children with disability?
- What are the risks that come with flexibility and how can students be protected from the risks?

### Key References:

- Report from the Education and Health Standing Committee of the WA Parliament: *A Different Kind of Brilliance: Report of the Inquiry into Support for Autistic Children and Young People in Schools* - see recommendation 14
- Report of the Education and Employment References Committee of the Australian Parliament: *The National Trend of School Refusal and Related Issues* - see recommendation 5
- Portugal's Decree-Law No 54/2018 - see Articles 18-28
- Italy's Law 104/1992
- *Education and Training Act 2020* (New Zealand) - see section 33

## 3. School life

### Roles and responsibilities

#### What is in the SE Act

The SE Act includes various functions, roles, and responsibilities for different people and groups involved in education. Here is a summary:

#### Minister for Education

- the Minister has many responsibilities throughout the Act, with key powers in section 216 and other key examples in sections 11M, 54, 55, 153, 159, 168, 201, 222, 223, and 231 of the SE Act
- important roles include establishing and closing schools, setting standards for non-government schools, reviewing certain decisions, and giving schools exemptions from the Act's laws.

#### CEO (Director General of the Department of Education)

- the CEO's key functions are outlined in section 61, with other key examples in sections 46-53, 83, 84, 85, 94, 158-166, 232 and 233 of the SE Act
- important roles include setting the standard of care and educational instruction in government schools, overseeing home education, determining and

cancelling enrolments in certain circumstances, determining exclusions and overseeing non-government school registrations.

### **Principals**

- key powers and responsibilities of all principals are to manage the enrolment process and attendance arrangements (see sections 19-21, 24, 26, 28 of the SE Act)
- government school principals have responsibilities outlined in section 63 which includes providing leadership, ensuring the safety and welfare of students, working with the school council and staff to create school plans, encouraging innovative teaching and deciding the content and implementation of an educational programme for a child with disability.

### **Teachers in government schools**

- teachers' roles are outlined in section 64 of the SE Act
- they are responsible for fostering learning and giving instruction according to the curriculum, CEO's standards, and the school's plan.

### **School councils**

- the key roles of school councils are in section 128 of the SE Act (also see sections 124-140)
- they help plan the school's goals, priorities, and finances and evaluate the school's performance.

### **Parents and citizens' associations**

- the key roles of parents and citizens' associations are in section 143 of the SE Act (also see sections 141-149)
- they promote the school's interests by fostering cooperation between parents, teachers, students, and the community, and encouraging community interest in education.

### **Teaching staff of community kindergarten**

- their roles are in section 205 of the SE Act
- they are responsible for fostering learning and giving instruction

The SE Act also allows for some of these duties to be delegated, as outlined in sections 224, 225, and 230.

None of the functions in the SE Act specifically mention inclusion or accessibility. In the detail of the SE Act, there is some responsibility on principals to consider the needs of students with a disability (see section 73). This is discussed in the next topic area of the Discussion Paper. There are no responsibilities on either the CEO or the Minister to support individual students with disability or to broadly make schools accessible and inclusive.

### **What other sources say**

Other Australian states and territories have similar roles and do not specifically mention inclusion or accessibility as being anyone's explicit responsibility. However, in many of the other states and territories, their laws include objects and principles

about inclusion. This means that everyone who works under these laws must follow the objects and principles when performing their roles under the laws.

### **Question**

6. Should there be any changes to the SE Act regarding roles and responsibilities? If so, what should this look like?

### **Things to think about**

- Look at sections 61, 63, 64, 128, 143, 205 and 216 of the SE Act – should any of the roles have a duty about access and inclusion?
- Are there any roles, responsibilities or functions missing from the SE Act?

### **Key references:**

- none

## **Right to adjustments and learning in the same classroom**

"Reasonable adjustment" or "adjustment" means making changes so that people with different needs, including people with disability, can take part as easily as other people. It might involve changing how things are done or making changes to the environment so that someone with a disability can use a service just like everyone else.

### **What is in the SE Act**

The SE Act does not give students with disability an explicit right to adjustment or to learn in the same classroom as their peers.

However, there is one section (section 73) that outlines a limited process for a principal to decide the unique needs of a child with disability regarding the content and implementation of the educational programme. Section 73 only applies to students with disability at government schools and says that the principal is to consult with the parent, teachers and 'if appropriate', the child. The principal makes the final decision.

### **What other sources say**

Human rights under the CRC and CRPD (including General Comment 4) say:

- children have a right to seek, receive and give information in ways they can understand
- individual support and adjustment are priority matters and should be free for all compulsory levels of education
- using a lack of resources and or money to justify failure to make progress towards inclusive education violates article 24 of the CRPD
- you are discriminating if you do not make adjustments for someone who needs it
- all adjustments should involve a consultation process

In Australia, the DDA and DSE say that all schools must make 'reasonable adjustments' for students when required to ensure they can access the services provided by schools. They do not set standards for universal design.

The Australian Capital Territory and the Northern Territory both have education legislation which explicitly provides for reasonable adjustments.

There have been several recent recommendations relating to adjustments:

- Australia (through the DDA) and WA (through *Equal Opportunity Act 1984*) should have a standalone duty to make 'adjustments'. The only exception to this duty should be when it would create 'unjustifiable hardship'
- States and Territories should have clear rules and steps for identifying, planning, implementing and evaluating adjustments.

In Portugal, schools must adapt their teaching methods to support all students. This includes providing adjustments for students who need them. Multidisciplinary teams, along with the child and their parents, decide on the support each student needs to participate fully in school, no matter their disability. In addition to providing adjustments for the students who require them, Portuguese laws also say that schools must have 'universal measures' for all students. 'Universal measures' is about making sure education is accessible to all students in general.

The CRPD (and General Comment No. 4) also says schools should take universal measures. In the context of the education system, this is about making sure that buildings, information and communication, education materials, teaching methods and assessment are universally accessible to all students, to the greatest extent possible, without the need for individualised adaptation or 'retrofit'.

### Question

7. Should there be any changes to the SE Act regarding adjustments for students with disability and/or universal measures? If so, what should this look like?

### Things to think about

- Look at section 73 of the SE Act and look at the DSE
- Is there anything that could be added to improve access and inclusion?
- Should WA education laws about adjustment or universal measures apply to all schools or just government schools?

### Key references:

- CRPD – see Article 24 and General Comment 4
- *Education Act 2004* (Australian Capital Territory) – see section 7(3)
- *Education Act 2015* (Northern Territory) – see section 52
- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – see recommendations 4.25, 4.26 and 7.3 Part A
- LRCWA Project 111 Final Report – see recommendations 66-68
- Portugal's Decree-Law No 54/2018 (Article 28) and Law 46/86 (Article 18)

## Communication/consultation

Communication, consultation and working together help people to understand each other, and consider each other's needs and ideas. Sometimes laws clearly say when consultation must take place. This is often the case when there is an imbalance in power or when better outcomes are expected through clear communication or consultation.

### What is in the SE Act

The SE Act has a small number of sections about consultation and very few mention including students. Section 73 says principals should talk with students 'if appropriate'. However, it does not say how to decide what is appropriate or what talking to students should involve.

### What other sources say

Under Australia's international human rights obligations, both the CRC and the CRPD say that children have the right to share their views on things that affect them and that their views should be given due weight. "Due weight" is decided by considering their age and maturity. The CRPD adds that students with disability should get appropriate assistance to realise this right.

The Australian Government and the Disability Royal Commission both recommended improvements to consultation in Australian schools. The recommendations are for changes to the DSE, but these have not been actioned yet. Even though the recommendations are for the DSE, states and territories could choose to apply them in their own laws. The recommendations include:

- set principles for how to consult with students and their families
- make sure students with disability can participate as fully as possible in decisions about their educational programs and the adjustments they require
- entitle parents and carers of students with disability to be assisted by schools or principals on decisions about school-wide adjustments to facilities and classroom practices where it affects students with disability.

In 2016 the Australian Senate Education and Employment References Committee reported on the levels of access and attainment for students with disability in the school system. The Committee recommended that students with disability and their families should be included in the development of the educational plan for their child, and there should be mechanisms to encourage the meaningful ongoing engagement of parents.

### Question

8. Should there be any changes to the SE Act regarding duties to communicate, consult and/or collaborate with students with disability and their parents. If so, what should this look like?



### **Things to think about**

- What helps to make communication and collaboration successful?
- Should schools support students with disability to share their views? Do you have any ideas about how this could be done well?
- Should schools support parents with disability to share their views? Do you have any ideas about how this could be done well?
- You may want to think about whether the changes you want should all be in the SE Act or whether some may be more suitable for regulations.

### **Key references:**

- Final Report of the 2020 Review of the Disability Standards for Education 2005 - see recommendation 2
- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - see recommendation 7.6
- Senate Education and Employment References Committee report: Access to real learning: the impact of policy, funding and culture on students with disability - see recommendation 9

## **4. When school is not going well**

### **Discipline, suspensions and exclusions**

#### **What is in the SE Act**

Sections 88-96 of the SE Act cover breaches of school discipline, suspensions, exclusions and reviews of decisions. These sections apply to government schools only.

The key term is 'breach of school discipline', which is defined as any act or omission that impairs the good order of the school.

The definition does not take into account if a student has a disability, or what caused their behaviour or if the school had been working with the student to avoid a 'breach of school discipline' by putting a support plan in place and following it.

#### **What other sources say**

Discipline for students with disability is complicated. The Disability Royal Commission found that teachers and school staff across Australia can see behaviours related to disability as students being intentionally disruptive. In these instances, the students or family often believed that the behaviour was a sign that the student was misunderstood, behaving distressed due to lack of support or needed different adjustments to make them more comfortable.

Human rights obligations under the CRC and CRPD say that:

- schools cannot punish a student because of their disability
- the best interests of the child should be a primary concern in all actions concerning children.

The DDA and the *Equal Opportunity Act 1984 (WA)* both say that it is unlawful for schools to discriminate against a student on the grounds of the students' impairment by expelling the student or subjecting them to any other detriment.

There has been criticism that exclusion and suspension processes in Australia are in contravention of our human rights obligations, as shown by:

- the overrepresentation of students with disability being excluded from schools, which amounts to a denial of access to education
- the fact that excluding children from school is rarely 'in the best interests of the child'.

The Disability Royal Commission recommended that states and territories should make sure that:

- excluding students with disability is a last resort
- exclusion is only used when there is a risk of serious harm
- decisions to exclude consider the student's disability
- before a student is excluded, certain steps are taken including consultation on an individual behaviour plan and reasonable adjustments.

Victoria has Ministerial orders made under its education legislation that require disability to be considered in disciplinary matters. In March 2024, Queensland introduced draft laws that say that schools must make support plans for students with disability who have been suspended or are at risk of being excluded.

### Question

9. Should there be any changes to the SE Act regarding discipline, suspensions or exclusions? If so, what should this look like?

### Things to think about

- Look at sections 88-96 of the SE Act
- Is the concept of 'breach of school discipline' a barrier to access and inclusion for students with disability?
- If the right adjustments and supports are not given to a student, they can feel unsafe, unwelcome and unsettled and communicate this through behaviour. Is it right that they could get excluded for their behaviours in these instances?

### Key references:

- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Volume 7 Inclusive education, employment and housing, Part A - see section 3.3
- CRC - see Articles 2, 3 and 28
- CRPD - see Articles 7 and 15
- DDA - see section 22
- *Equal Opportunity Act 1984 (WA)* - see section 66l
- Down et al, 2024, *What is missing in policy discourses about school exclusions*, Critical Studies in Education
- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - see recommendation 7.2

- Ministerial Order 1125 made under the Education and Training Reform Act 2006 (Victoria)
- Education (General Provisions) and Other Legislation Amendment Bill 2024 (Queensland) - see clause 94

## Restrictive practices

Restrictive practices are actions or interventions that limit a person's freedom or control their behaviour. Restrictive practices are sometimes used in response to breaches of discipline or to maintain order. They can include things like:

- physical restraint: holding or blocking someone's movement
- chemical restraint: using medication to sedate someone
- mechanical restraint: using devices like straps or belts to restrict movement or taking a communication device away from someone
- seclusion: isolating a person in a room or space they cannot leave
- environmental restraint: changing the environment to limit a person's movement or activities, like locking doors or removing mobility aids
- psychosocial: telling a person they are unable to do something, without attempting to make an adjustment.

### What is in the Act

Powers to use some restrictive practices are in the regulations that sit under the SE Act.

Regulation 38 of the School Education Regulations 2000 says that government school staff can take reasonable actions against a student or their property, including physical contact for any of the following reasons:

- to manage or care for a student
- to maintain or restore order
- to prevent someone from harming another person or from damaging property

This regulation only applies to government schools.

### What other sources say

According to the CRC says that all children have a right to freedom and protection from physical or mental harm. The CRPD adds that children with disability should not have their freedom taken away without a good reason. Just having a disability is not a valid reason to take away someone's freedom. Every person with a disability has the right to be respected and to have their physical and mental well-being treated equally to everyone else.

The DDA and DSE do not cover restrictive practices.

The Disability Royal Commission recommended that:

- there should be a lot of rules around restrictive practices including that they are only used when there is a serious risk of harm and only as a last resort after trying other strategies and for the shortest time and least restriction possible.

Any use of restrictive practices should be independently reviewed and monitored

- some forms of restricted practices should be banned from being used by schools
- data needs to be collected on the use of restrictive practices
- there should be targets to reduce and eventually eliminate the use of restrictive practices.

Other significant inquiries in Australia have also recommended ending restrictive practices in schools.

### Question

10. Should there be any changes to the SE Act (or regulations) regarding restrictive practices? If so, what should this look like?

### Things to think about

- Look at Regulation 38 of the School Education Regulations 2000
- The Department of Education's Student Behaviours in Public Schools Policy and Procedures says that physical restraint must only be used for the minimum amount of time needed for the student to recover to behaviour where less restrictive strategies may be successful. The policies also say that de-escalation must be attempted for a reasonable length of time before engaging in restrictive strategies. Do you think some of this should also be in the SE Act?

### Key references:

- CRC - see Articles 19 and 37
- CRPD - see Articles 14 and 17
- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - see recommendations 6.35, 6.36, 6.39 and 6.40
- Senate Education and Employment References Committee report: Access to real learning: the impact of policy, funding and culture on students with disability - see recommendation 10

## Disability Advisory Panel and Discipline Advisory Panel

### What is in the SE Act

The SE Act sets up 2 different panels to consider exclusion cases in government schools. These examine each case and give a recommendation to the Chief Executive Officer (CEO). However, the CEO does not have to follow the recommendation.

Students can be excluded from government schools if their behaviour meets the criteria in:

- section 91(a) – if they have adversely affected or threatened a person or damaged property
- section 91(b) – if they have disrupted other students' learning

### **Disability Advisory Panel**

According to Section 87, a Disability Advisory Panel must be formed when a student with a disability (as defined by the SE Act) is recommended for exclusion under Section 91(b).

### **Discipline Advisory Panel**

According to Section 92, Discipline Advisory Panels are set up for students without a disability who are recommended for exclusion under either Section 91(a) or 91(b).

There is a notable gap that students with a disability, who are excluded under section 91(a), are not entitled to the Disability Advisory Panel or a Discipline Advisory Panel process.

### **What other sources say**

The gap with the use of panels only applies to the SE Act so what other places do is not relevant to this matter.

### **Question**

11. Should there be any changes to the Disability Advisory Panel and/or Discipline Advisory Panel sections of the SE Act? If so, what should this look like?

### **Things to think about**

- Look at sections 87, 91 and 92 of the SE Act.
- How could the panels be changed to improve access and inclusion for students with disability?
- As we raised earlier, some places do not define disability and instead refer to diversity and that all students are different and have different needs that schools should consider and adjust to. This concept could also be applied to these panels.

### **Key references:**

- None

## **Disputes and complaints**

### **What is in the SE Act**

Section 118 of the SE Act is the key section that deals with disputes and complaints, and it applies to government schools only. Section 118 is small and just says that regulations can be made to provide for a way of dealing with disputes and complaints about the provision of education or the conduct of a member of teaching staff.

### **What other sources say**

General Comment 4 to Article 24 of the CRPD says that there must be independent, effective, accessible, transparent, safe and enforceable ways to handle complaints and legal issues in cases about the right to education. The CRPD says people with disability have a right to seek, receive and give information in ways they can

understand, to receive support to participate fully in processes that affect their lives, and for them and their families to advocate for their human rights.

The Disability Royal Commission made several recommendations about complaints and disputes, including:

- State and territory governments should create or expand the offices that handle complaints about schools to help resolve complaints, especially in cases where the student has a disability. These offices should be separate from schools and should:
  - give students and parents information about their rights and options
  - conduct conciliations, connect families with disability support
  - start a formal investigation if a complaint is serious or a systemic issue
  - where a complaint cannot be resolved, help to refer it to an independent body
  - help to analyse complaints and report on how to improve the education system
  - work with principals to ensure school policies focus on students, are accessible, efficient, safe, trauma-informed, and culturally appropriate
- the DSE should include new duties and measures for handling complaints to make sure the process is student-focused, accessible, efficient, safe, trauma-informed, and culturally appropriate. These rules should apply to all schools, including non-government schools, to monitor and enforce compliance.

The 2020 Review of the DSE recommended that the DSE should change to include principles on the complaints handling process.

### **Question**

12. Should the SE Act change so complaints are handled in a different way? If so, what should this look like?

### **Things to think about**

- Look at section 118 of the SE Act
- What does a good complaints handling process look and feel like?
- The SE Act only has a small amount of detail on handling complaints. Do you think it should be expanded to include some of the suggestions made by the Disability Royal Commission or the DSE review?

### **Key references:**

- Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - see recommendation 7.10

## Making sure we continue to improve

The issues and questions in this paper are all about ideas for changes to the SE Act to improve access and inclusion for children and young people with disability.

The final question of this Discussion Paper is to find out if you have any ideas for changing the SE Act in a way that can help us to know if we are actually improving or not.

### Question

13. With all the changes you have suggested in mind, how can the government monitor what is happening and show things are improving?

### Things to think about

- You may want to consider things like collecting data, accountability, and reporting.

### Key references:

- none

# Appendices A

## Key terms and acronyms

**CRC** – United Nations Convention for the Rights of the Child

**CRPD** – United Nations Convention for the Rights of Persons with Disabilities

**Cth** – Commonwealth (of Australia)

**DDA** - *Disability Discrimination Act 1992* (Cth)

**DSE** – Disability Standards for Education 2005 (Cth)

**LRCWA** – Law Reform Commission of Western Australia

**SE Act** - *School Education Act 1999*

**WA** – Western Australia