

SCHOOL EDUCATION AMENDMENT BILL 2023

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to make amendments to the *School Education Act 1999* to put in place arrangements that accord with the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (Commission Report) released in December 2017. On 27 June 2018, the State Government accepted the 310 recommendations that applied to the Government, with the implementation to be staged over a 10-year period (2017-2027) and a comprehensive 10-year review in 2027.

The Commission Report made recommendations about children with harmful sexual behaviours and the need to have procedures to deal with complaints about these children – Recommendation 13.6. A further recommendation was that government agencies should ensure that the needs of victims and survivors are recognised – Recommendation 9.8.

There have been occasions when a student has been charged with, or convicted of, a sexual offence against another student at the same school. The alleged offending student's continued attendance at the school affects the safety, wellbeing or ability to learn of the student who was the victim of the alleged offence. As a result, in some instances victims have disengaged from schooling or moved schools in order to avoid the alleged offender.

The Bill will maintain and enhance safe schools and consider the needs of all students involved. The proposed amendment provides a process for a decision by the CEO (Director General of Education) that requires consideration about the impact on the student charged or convicted of a sexual offence and the student that is the complainant for the charge or conviction.

The scheme provides the Director General with a specific power to initiate a suspension and then undertake an exclusion process. The powers provided to the Director General are distinct from the principal's power to deal with a breach of school discipline or disruptive behaviour.

Clause 1 Short Title

School Education Amendment Act 2023 (Amendment Act).

Clause 2 Commencement

Clauses 1 and 2 come into operation the day after Royal Assent. The other clauses come into operation on a day to be fixed by proclamation because regulations need to be put in place to support the operation of section 96D – see 96D(3) suspension regulations.

Clause 3 Act amended

The Amendment Act amends the *School Education Act 1999 (School Act)*.

Clause 4 Part 3 Division 5 Subdivision 1 heading inserted

At the beginning of Part 3; Government Schools and Division 5; Suspension and exclusion, the new heading Subdivision 1 – Preliminary is inserted. This provides for the inclusion of additional subdivision headings so as to differentiate between Subdivision 2 – Suspension and exclusion for breach of school discipline and disruptive behaviour and the new Subdivision 3 – Suspension and exclusion of a student charged with or convicted of a sexual offence.

Clause 5 Part 3 Division 5 Subdivision 2 heading inserted

The new subdivision heading is inserted after section 88 and before section 89 so as to differentiate between Subdivision 2 – Suspension and exclusion for breach of school discipline and disruptive behaviour and the new Subdivision 3 – Suspension of a student charged with or convicted of a sexual offence.

Clause 6 Section 89 is replaced

The amendment substitutes Subdivision for Division.

Clause 7 Section 91 amended

The amendment substitutes Subdivision for Division. Further, the words for the heading of section 91 is reordered to be Grounds for excluding student from school attendance.

Clause 8 Section 92 amended

The word 'school' is deleted and replaced with the words 'school then, subject to section 96F(2)', the principal may recommend. The amendment provides that the principal's power to recommend an exclusion is subject to the power of the CEO. Further, the words of the heading for section 92 are reordered to read 'Procedure for excluding student from school attendance.'

Clause 9 Section 95 amended

The amendment substitutes Subdivision for Division. Further, the words of the heading for section 95 are reordered to read 'Principal's power to exclude from school attendance student enrolled after compulsory education period.'

Clause 10 Section 96A inserted

This is the start of the new powers for the CEO to suspend and exclude a student charged with or convicted of a sexual offence. Section 96A heading states 'Subdivision 3 not limited by this Subdivision' being Subdivision 2 which provides for a suspension or exclusion commenced by a principal. This section complements the amendment to section 92 that provides the principal's power is subject to the CEO notifying that the CEO is dealing with the matter.

Clause 11 Part 3 Division 5 Subdivision 3 inserted

This is the insertion and commencement of the scheme for the CEO to suspend and exclude a student charged with or convicted of a sexual offence. The amendment inserts the heading 'Subdivision 3 – Suspension an exclusion of student charged with or convicted of sexual offence'. The new Subdivision then provides the sections for the new scheme.

96B Terms Used

The term **compliant** is used because the exercise of the power must relate to a charge or a conviction.

The term **sexual offence** has the meaning given in section 19C of the *Parliamentary Commissioner Act 1971*. This means that unless the offence is a sexual offence as defined, the CEO's authority to exclude a student under Subdivision 3 does not apply. The term sexual offence is defined and used for the *Parliamentary Commissioner Act 1971* Reportable Conduct Scheme. The term sexual offence in the *Parliamentary Commissioners Act 1971* is defined as follows.

sexual offence —

- (a) means an offence of a sexual nature under a law of this State, another State, a Territory or the Commonwealth, committed against, with or in the presence of, a child; and
- (b) includes, without limitation —
 - (i) an offence under *The Criminal Code* Chapter XXXI committed against, with or in the presence of, a child; and
 - (ii) an offence of a sexual nature under *The Criminal Code* Chapter XXV; and
 - (iii) an offence of a sexual nature under any other provision of *The Criminal Code* committed against, with or in the presence of, a child; and

- (iv) an offence under a law of another State, a Territory or the Commonwealth the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in subparagraph (i), (ii) or (iii); and
- (v) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in subparagraphs (i) to (iv) or paragraph (a); and
- (vi) an offence that, at the time it was committed (whether before, on or after commencement day), was an offence of a kind referred to in paragraph (a).

96C Term used: Conviction

The section describes what constitutes a conviction through the relevant court processes.

96D Suspension of student

- (a) This section applies if the circumstances referred to in 96(a) to (e) exist, being the student is charged with or convicted of a sexual offence and the other matters apply.
- (b) If the circumstances exist then the CEO may give a direction to the principal to suspend the student.
- (c) The principal must give effect to the directions in accordance with the regulations. Regulations are needed that commence at the same time the proclamation provided by Clause 2(b) occurs.
- (d) Currently regulations relating to a student suspended from school, amongst other things, provide for the number of days a student may be suspended and circumstances when a suspension may be excluded.
- (e) The CEO cannot delegate the power to direct a principal to suspend the student.

96E Grounds for excluding student from school attendance

This section provides the basis for the exercise of the CEO's power to exclude being;

- (a) the student has been charged or convicted; and
- (b) the complainant attends the same school; and
- (c) the CEO forms an opinion the continued attendance of the student is likely to adversely affect the complainant's safety and welfare or ability to learn.

96F Procedure for excluding student from school attendance

This section provides for the process to be followed for an exclusion by the CEO which is:

Subsection (1)

- (a) give notice to the student and a parent that the CEO has formed an opinion that the student's continued attendance at the school is likely to adversely affect the complainant. The CEO is required to set out the reasons for having formed that opinion and give the student and parent the reasonable opportunity to respond and
- (b) give notice to the complainant and a parent that the CEO has formed an opinion that the student's continued attendance at the school is likely to adversely affect the complainant. The CEO is required to set out the reasons for having formed that opinion and give the complainant and the parent the reasonable opportunity to respond; and
- (c) notify the principal that the CEO has formed an opinion that the student's continued attendance at the school is likely to adversely affect the complainant and the CEO is dealing with the matter.

Subsection (2)

Once notified by the CEO the principal cannot deal with the matter as a breach of discipline or a disruptive behaviour.

Subsection (3)

This subsection sets out the matters the CEO must have regard to in making an exclusion order;

- (a) the response of the student or their parent;
- (b) the response of the complainant or their parent;
- (c) the effect of exclusion on the student and complainant;
- (d) the capacity of the school to minimise the risk to the complainant's safety and wellbeing or ability to learn;
- (e) the availability of an alternative school or educational program for the student.

Subsection (4)

In making an exclusion order the CEO can consider any other matters the CEO considers relevant or that may be prescribed that should be taken into account. It should be noted that there is flexibility under section 96G to the type of exclusion order to be made and the period that order will have effect.

The type of 'other' matter that the CEO may consider, is that the claimant will be ending their educational program at the school some time before the student so the exclusion order may be for a limited time so as to allow the student to return to the school at a later time if that is considered appropriate.

96G

This section sets out the types of exclusion order the CEO may make after undertaking the procedure provided for by section 96F.

Subsection (1)

- (a) An order excluding the student from normal attendance but directing the student to attend for a specified purpose.

For example, the student may attend a specialised program that is separate and distinct from other educational programs attended by the complainant so there is capacity for the student to attend that program without having any detrimental effect on the complainant.

- (b) an order completely excluding the student from attending the school.

In this case the student will be enrolled at a different school or educational program not delivered by the school.

- (c) an order directing the student to attend a specified government school or to participate in a specified educational program.

The Department will work with the excluded student to identify an alternative school or educational program that is acceptable to the student, however there may be circumstances where the excluded student needs to be directed to an alternative school or educational program.

- (d) an order determining the educational instruction that the student is to be given.

The educational instruction given to the student may need to focus on particular curriculum, learning or welfare outcomes for the student.

Subsection (2)

In making an exclusion order under subsection (1) the CEO must consider an order about the educational instruction to be given to the student.

Subsection (3)

In making an exclusion order, including an order about the educational instruction to be given to the student, the CEO can specify a period that the order will have effect and may at any time revoke or amend that order by a further order.

Subsection (4)

The CEO cannot delegate the authority to make an exclusion order for a student charged with or convicted of a sexual offence.

96H

If the CEO makes an exclusion order, the CEO must notify the student and their parent setting out the reasons for making the order.

96I

This section specifies situations when the CEO must reconsider an exclusion order where the initial charge or conviction for the exclusion process has been determined in a particular manner.

Subsection (1)

- (a) If the exclusion order under section 96G is based on a charge or conviction of a sexual offence; and
- (b) The charge is withdrawn, discontinued, dismissed, the student is acquitted, there is a mistrial or for any other reason the student is not brought to trial on the charge or the conviction is overturned or quashed on appeal; then

Subsection (2)

The CEO must give proper consideration as to whether to revoke or amend the exclusion order made.