

***YourSAy* Consultation Report –  
Consultation Draft  
of the Education and  
Children’s Services Bill 2016**



**Government  
of South Australia**  
Department for Education  
and Child Development

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## Introduction

The current *Education Act 1972* was passed 45 years ago and has been the subject of 22 specific amending Acts. The *Children's Services Act 1985* has only been the subject of two specific amending Acts over the past 32 years, however those amendments have been significant and only 20 of its original 57 sections remain.

This piecemeal approach to the reform of the *Education Act 1972* and the *Children's Services Act 1985* has given rise to inconsistencies, obsolete references and a lack of coherency within the legislation.

Amendments to the Education and Children's Services Acts have seen the new legislation established for teacher registration and the regulation of non-Government schools and early childhood services: the *Teachers Registration and Standards Act 2004* and the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

Reform of the Education and Children's Services Acts will provide a contemporary legislative framework to guide the delivery of education and children's services in South Australia. In addition, it will address many specific problems associated with the operation of these Acts in their current form and provide enhanced powers to assist schools, preschools and children's services centres to provide safe environments for students and staff and to address the incidence of chronic non-attendance at school.

## YourSAy consultation

Bringing together the remaining provisions of the Education and Children's Services Acts into one Act will promote a system and department that cares for and educates children from birth to end of schooling. It acknowledges the overlap between the Acts and their administration, for example, in the establishment of preschools.

An exposure draft of the Education and Children's Services Bill was released for public comment on the DECD website on 19 December 2016. The Bill was further promoted on the Government's *YourSAy* website along with four Information Sheets on 16 January 2017, inviting community feedback on the provisions of the Bill. The consultation period closed on 10 March 2017 and feedback received has been summarised in this report and has assisted in the drafting of the finalised Bill that will be introduced into Parliament later in 2017.

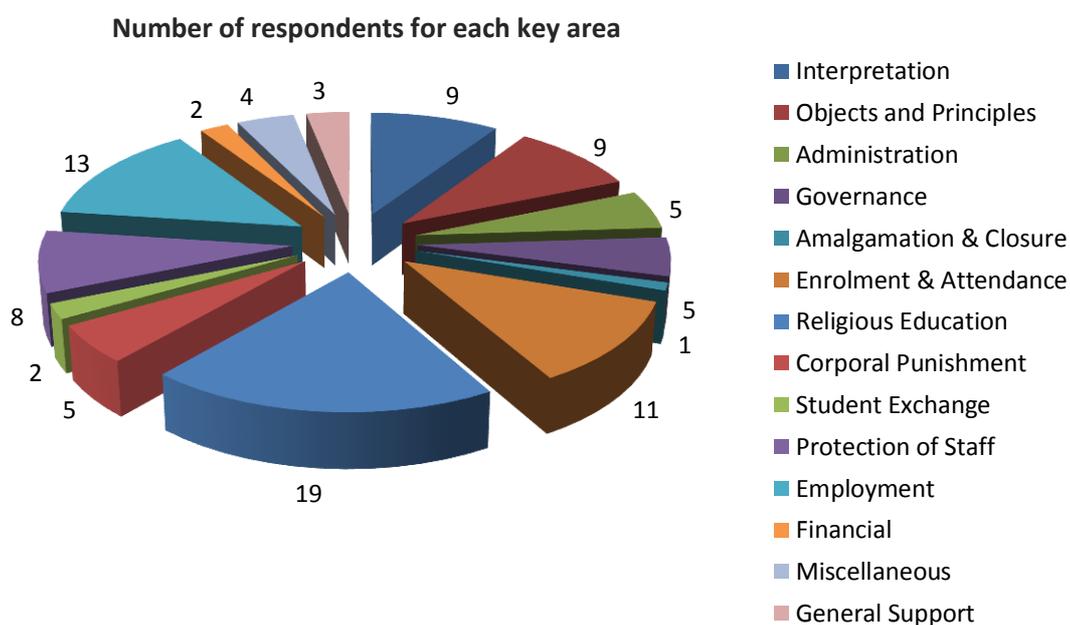
## Submission data

45 responses were received by email and via discussion posts on the *YourSAy* website. Of these 17 (38%) were from organisations and 28 (62%) were from individuals.

## Summary of feedback received

45 responses were received by email and via discussion posts on the *YourSAy* website. Of these 17 (38%) were from organisations and 28 (62%) were from individuals. Respondents generally commented across a range of key areas of the Bill. Their contributions were distributed as follows:

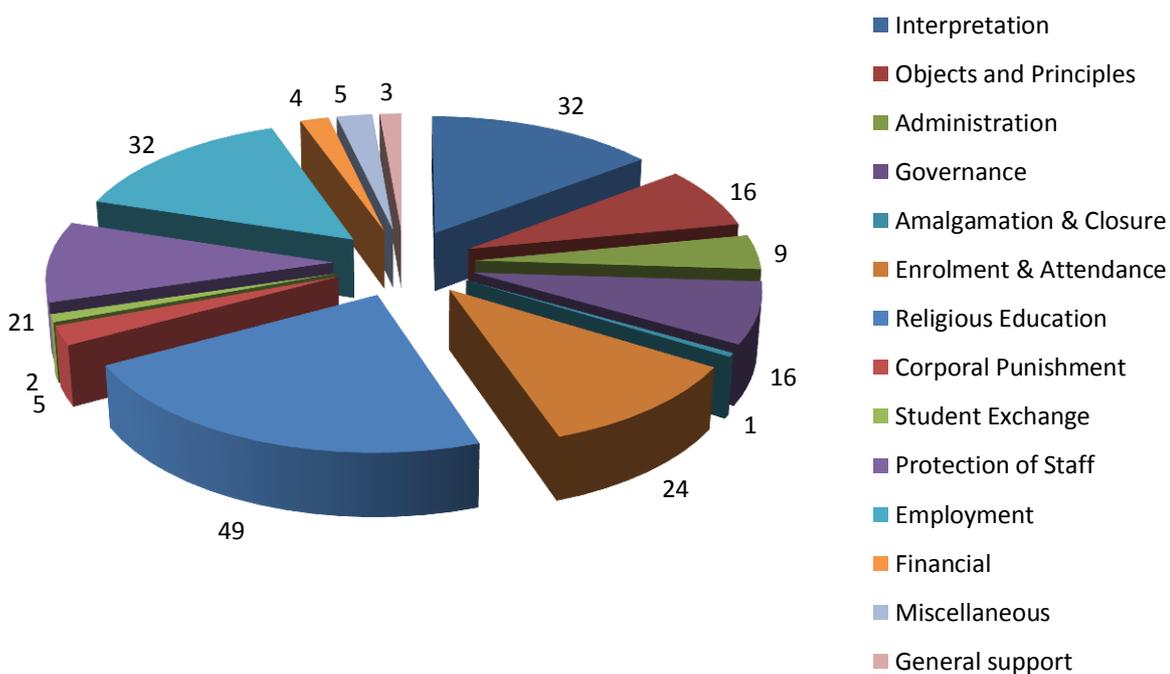
Key areas	No. of Respondents
Interpretation	9
Objects and Principles	6
Administration	3
Governance	5
Amalgamation & Closure	1
Enrolment & Attendance	11
Religious Education	19
Corporal Punishment	5
Student Exchange	2
Protection of Staff	5
Employment	13
Financial	0
Miscellaneous	3
General Support	3



A number of respondents provided multiple comments in relation to different aspects of the same clauses or key areas. Some also indicated general support for the Bill, which is also included in the statistics below. The total number of comments relating to each key area are summarised as follows:

Key areas	Total No. of Comments
Interpretation	32
Objects and Principles	15
Administration	9
Governance	16
Amalgamation & Closure	1
Enrolment & Attendance	24
Religious Education	49
Corporal Punishment	5
Student Exchange	2
Protection of Staff	11
Employment	32
Financial	0
Miscellaneous	3
General support	3

Number of comments for each key area



## Interpretation

Clause 3 of the Bill sets out provisions for the interpretation of relevant terms and concepts used in the Bill.

A total of 9 respondents to the consultation provided comment on clause 3. Overall, there were 32 individual comments. Most of these related to the clarification of a particular term defined under clause 3. A small number of responses suggested further inclusions in the list of terms defined.

## Objects and Principles

There are currently no overarching principles that guide the operation and administration of either the *Education Act 1972* or *Children Services Act 1985*. However, the *Children's Services Act* did have objects prior to their removal when the *Education and Early Childhood Services (Registration and Standards) Act 2011* commenced on 1 January 2012.

The insertion of overarching principles brings SA one step closer to other Australian jurisdictions, including ACT, New South Wales and Queensland who each have an objects clause in their education legislation.

The objects and principles include matters such as the paramountcy of the best interests of children, their right to an education and recognition of the involvement of parents and caregivers and other members of the community in the provision of education and children's services in South Australia.

Eight respondents to the consultation made submissions on clause 6, with a total of 15 comments received. Overall, there was significant support for the inclusion of objects and principles in the Bill, with over 90% of respondents indicating their support, noting that some also made suggestions for improvement or enhancement in way these were expressed, such as ensuring that all objects and principles were relevant to education and children's services and references to parents were inclusive of other types of carers.

## Administration

Clauses 7-13 of the Bill sets out the administrative provisions of the Bill:

- Functions of the Chief Executive
- Administrative instructions
- Model constitutions
- Advisory committees
- Delegation
- Chief Executive may require information from schools, preschools and children's services
- Sharing of information between certain persons and bodies.

Five respondents commented on the administrative clauses, comprising nine comments in total. Seven of these related to the information sharing provisions in clause 13 of the Bill, which was generally supported, with two further responses qualifying their support with additional comments or suggestions, such as including privacy safeguards.

## Governance

The Governance provisions of the Bill address the establishment and governance of government preschools and children's services as well as the establishment and continuation for the governance of government schools. The provisions encompass a wide range of clauses in the Bill from clause 14 through to clause 61.

The governance clauses include provision for governing councils of schools and preschools and enable the continuation and transition of preschools and children's services currently registered under the Children's Services Act into the new legislation. Five respondents submitted a total of 16 comments on 16 separate clauses. Whilst there were some specific views raised in relation to particular provisions, there were no concerns raised about overall governance arrangements for schools, preschools and children's services centres.

## Amalgamation and Closure

Clause 32 of the Bill sets out provisions in relation to the closure of standalone preschools and children's services. Clauses 54 to 58 set out provision for the amalgamation and closure of schools.

A single submission was received in respect of these clauses, which was supportive of closures of preschools with low enrolments.

## Enrolment and Attendance

Clauses 62 to 76 of the Bill establish provisions relating to:

- the enrolment of children and adults in schools
- information gathering in respect to students and their enrolment
- compulsory attendance of children at school or, where relevant, an approved learning program
- limitations on the employment of children of compulsory school age or education age
- reporting of persistent non-attendance.

Eleven respondents provided 24 comments on the provisions related to enrolment and attendance. The majority of these focussed on three areas: the use of fines and financial penalties to deal with a child's non-attendance at school (noting that these are only exercised as an option of last resort), new provisions relating to family conferences and the Chief Executive's powers to direct a child to a specific school in particular circumstances. The remainder of comments expressed support for, or requested clarification about the operation of the provisions.

## Religious Education

Nineteen respondents provided feedback about the delivery of religious education and seminars in government schools. These comprised 49 comments on various clauses.

The Bill reflects arrangements for the delivery of religious education in government schools and preschools. Religious education is defined as the study of various religions and maintains existing exemptions from

participation in respect of such study. The Bill sets out clear terminology to distinguish between the types of religious education and activities that occur in government schools.

The Bill continues current arrangements for religious groups to be able to conduct seminars for a maximum of one half-day per term, at the school or elsewhere, during instruction time. The organisation of such seminars is a matter for individual principals, following an assessment of the nature and content of the seminar as being appropriate for their respective school communities. Student attendance at seminars will require parental consent.

### **Clause 77 - Religious Education**

Clause 77 sets out provision for the general study of various religions as part of the curriculum delivered in South Australian schools. In practice, religious education is not a specific topic in the Australian Curriculum, although the curriculum provides opportunities for the study of religions in the Humanities and Social Sciences learning area, mostly in the subjects of History and Civics and Citizenship. Accordingly, such education would be delivered by a registered teacher.

A total of 15 respondents commented on clause 77. Five were supportive, six respondents indicated support together with additional comments or suggestions, three respondents sought to clarify the operation of the clause (eg that such education would be delivered by a registered teacher), and one opposed it.

### **Clause 78 - Religious Seminars**

Clause 78 provides that the principal of a government school may, on the request of the local clergy, set aside a maximum of 1 half day in each term for the conduct of religious seminars by churches. Clause 78 clarifies that such seminars do not form part of the curriculum determined by the Chief Executive.

There were 19 respondents to clause 78. Of these, 11 opposed the provision of religious seminars in public schools, seven were supportive, two of whom provided additional suggestions. One respondent opposed provision for religious seminars without an allowance for secular alternatives, such as special ethics classes.

### **Clause 79 - Exemption from attendance and participation in religious education or seminars**

Clause 79 sets out exemption arrangements from participation in religious education. It also provides that a student who is a child may attend or participate in a religious seminar only if a person responsible for the student consents to such attendance or participation.

Under clause 79 a student who is exempted, or does not have parental permission to attend or participate in religious education or seminars cannot suffer detriment as a result of not attending or participating.

Of the eight respondents who provided submissions, six opposed it, either in its current form, or subject to the retention or removal of clause 78. Two respondents supported the clause with qualifications.

A number of respondents who opposed arrangements for religious seminars suggested that if provision for seminars in clause 78 was retained the consent provisions for seminars needed to be improved. This included ensuring that participation in religious seminars was clearly an opt-in consent arrangement and that consent was properly informed.

Some respondents suggested that there should be no exemption from learning about various religions and belief systems as part of the curriculum.

One respondent favoured retaining student exemption from seminars over parental consent to participation.

## Prohibition of Corporal Punishment

The Bill establishes the prohibition of corporal punishment in South Australian schools, preschools and children's services. Clause 35 provides that corporal punishment (however described) must not be imposed on a child enrolled in or attending at a stand-alone preschool or children's services centre. Clause 80 provides that corporal punishment must not be imposed on a student and applies to all students of South Australian schools and approved learning programs.

Both clauses 35 and 80 make it clear that corporal punishment will be taken *not* to amount to conduct that lies within the limits of what would be generally accepted in the community as normal incidents of social interaction or community life. This means that the defence to a charge of assault available under the *Criminal Law Consolidation Act 1935* (CLCA) on those grounds will not apply in respect to corporal punishment in schools, preschools and children's services.

The five respondents to these clauses supported this position

## Registration of student exchange programs

Clauses 81 to 86 of the Bill set out a scheme for the registration and oversight of student exchange organisations in South Australia by the Education Standards Board.

Two respondents submitted comments about these clauses. Both were supportive of the new legislative arrangements for such services and provided commentary about the duration of exchange programs.

## Protections for teachers, staff and students

Existing penalties associated with trespass and misbehaviour on school grounds are significantly lower in SA than in other jurisdictions, eg the penalty for behaving in an offensive or insulting manner towards a teacher is \$500 in South Australia compared to \$5,000 for the equivalent offence in Western Australia.

In a majority of other Australian jurisdictions the relevant education legislation provides the power for the Chief Executive to direct a student to be enrolled in a specific government school or to deny enrolment at a specific school, particularly where enrolment may pose a risk to other students or staff. Additionally, there is a trend in more recent education legislation to include specific provisions relating to assessment of risk in respect of the enrolment of mature-age students.

Clauses 87-91 of the Bill establish a range of provisions to protect teachers, staff and students at South Australian schools, preschools, and children's services centres. Other than provisions for the enrolment of adult students, these clauses generally replicate and enhance existing provisions with some now applying to government and non-government schools, preschools and children's services in South Australia.

Eight respondents provided a total of 21 comments on these provisions, which were broadly supportive of the proposed arrangements for safe environments.

## Employment

Part 9 of the Bill (clauses 92 to 117) relates to the employment of the teaching service. Part 10 (clauses 118-120) provides that the Chief Executive may employ other persons as are necessary or appropriate for the purposes of the Act. Clause 121 within Part 11 sets out the employment-related appeal provisions for officers of the teaching service.

Thirteen respondents provided a total of 32 comments on the employment provisions in the Bill. These related to the following employment arrangements:

### **Definition of *misconduct***

Clause 92 of the Bill provides a definition of misconduct for the purposes of Part 9 of the Bill. This provision is similar to the definition of misconduct in the *Public Sector Act 2009* (Public Sector Act). One respondent sought clarification of the definition and application of the code of conduct to officers of the teaching service.

### **Appointment to the teaching service**

Clause 93 of the Bill provides the authority for the Chief Executive to appoint teachers to be officers of the teaching service. This appointment may be on an ongoing, temporary or casual basis. Under clause 93, ongoing teaching appointments may only be terminated in accordance with the provisions of the Act (clause 93(4)), and that term or casual teaching appointments hold office for a term and on conditions determined by the Chief Executive (clause 93(5)).

Two respondents provided feedback on this provision; these submissions discussed tenure arrangements for teachers and made comment on terminology used and drafting style.

### **Merit-based selection processes**

Clause 94(1) of the Bill sets out that the following types of employee engagement may only occur in relation to an officer of the teaching service as a consequence of a merit selection process:

- Appointment or reappointment of an officer
- Promotion of an officer to a higher remuneration level
- Changing the basis on which an officer is engaged to engagement on an ongoing basis.

Clause 94(2) disapplies the requirement for a merit selection process in a number of circumstances, including the reappointment or extension of a contract of employment of an officer of the teaching service in circumstances prescribed by the regulations or any other circumstances prescribed by regulations.

Three submissions supported these arrangements, although requested clarification of how the clause would operate and a further submission identified a drafting issue.

### **Attraction and retention**

Clause 96 of the Bill sets out provisions for the payment of attraction and retention allowances to officers of the teaching service. Of the four submissions received, one of the respondents opposed this provision, while the remaining three indicated support.

### **Probation**

Clause 97 of the Bill sets out probation requirements for officers of the teaching service.

One respondent submitted comments about the application of probation to teachers moving from one contact to another, as well as the need for, and length of, probation for officers of the teaching service.

## **Assignment of duties and transfer within the department**

Clause 98 of the Bill sets out that the Chief Executive may determine the duties of an officer of the teaching service and the location at which they are performed. This may include the transfer of a teacher to an administrative or other specified position. The clause also allows for regulations to be made in relation to the operation of the clause, including provisions that limit the circumstances in which such a transfer could occur.

The single submission to this clause sought clarification regarding how this would apply to transfer of teachers into positions which do not require teaching qualifications.

## **Appointment to promotional level positions in the teaching service**

Clause 101 of the Bill replicates existing arrangements in the Education Act regarding applications for promotional level positions by officers of the teaching service. These may be submitted to the Chief Executive or a committee established and appointed by the Chief Executive with a membership agreed by the Australian Education Union (AEU). One member must be a nominee of the AEU (clause 101(2)(b)). The Chief Executive or the committee may provisionally recommend that an applicant be appointed to a vacant position.

The clause also sets out circumstances where an application and merit selection process are not required, including where a teacher is appointed to a position in an acting capacity for up to 12 months or where a teacher transfers between positions in the teaching service.

The clause also provides for the Chief Executive to appoint a teacher to a promotional level position in an acting capacity for up to 12 months.

A single respondent opposed particular elements of the composition of promotional level selection panels.

## **Disciplinary action**

Clause 110 of the Bill sets out that the Chief Executive may take disciplinary action against an officer of the teaching service if they are guilty of misconduct. There are a range of consequences following such a finding such as; reprimand, variation of duties, reclassification and termination.

Regulations may also be made in respect of disciplinary action that may be taken against a teacher.

Three respondents provided comments about this clause, which clarified its operation, or made suggestions for enhancements.

## **Managing unsatisfactory performance**

Clause 111 of the Bill sets out that the Chief Executive may take action against an officer of the teaching service if their performance is found to be unsatisfactory. This action could include one or more of the following; reprimand, reduction in remuneration, variation of duties, reclassification, transfer to another position or termination.

Regulations may also be made in respect of managing the unsatisfactory performance of a teacher.

Three respondents provided comments about clause 111, with all indicating general support for these arrangements. The respondents provided some comments and posited some questions about the operation of the provision.

## **Reduction in remuneration level**

Clause 112(a)-(e) of the Bill sets out that the Chief Executive may reduce the remuneration of an officer of the teaching service without the officer's consent for any of the following reasons:

- being excess to the requirements of the teaching service at the higher remuneration level

- being physically or mentally incapable of satisfactorily performing the duties required at the higher remuneration level
- unsatisfactory performance
- misconduct
- lack of an essential qualification in respect of the higher remuneration level.

The clause also sets out some safeguards for teachers in respect of the use of these powers.

One respondent expressed concern about the operation of this provision.

### **Suspension**

Clause 113 of the Bill allows the Chief Executive to suspend an officer of the teaching service if they are of the opinion that the circumstances of any matter alleged against the teacher are such that the teacher should not continue in the performance of their duties. Such a suspension may be effected whether or not the teacher has been charged with an offence. The teacher will be suspended with pay unless the Chief Executive directs otherwise.

One respondent submitted that all suspensions should be with pay and made suggestions about timeframes for periods of suspension.

### **Chief Executive may employ other persons for the purposes of the Act**

Clauses 118 and 119 of the Bill set out that the Chief Executive may employ such other persons, in addition to the employees and officers of the department and officers of the teaching service, as necessary or appropriate for the purposes of the Act, and their relevant employment arrangements. The Bill clarifies that these may include persons employed to provide health, social or other non-education services in relation to schools and children's services centres (clause 118(2)).

Four respondents provided comments with respect to clause 118, This feedback was supportive of the inclusion of this provision, with one respondent including suggestion for improvement.

### **Review by the South Australian Employment Tribunal of employment-related decisions and determinations**

Under clause 121, a teacher who is aggrieved with a decision or determination of the Chief Executive under Part 9 (Part 9 of the Act concerns employment of the teaching service), other than a decision of a kind prescribed by the regulations, may apply to SAET for a review of the decision or determination.

Clause 121(3) provides that for review of particular decisions, SAET may decide to sit with supplementary panel members that include a nominee of the Chief Executive and a nominee of the AEU.

One respondent submitted feedback on clause 121(3), opposing the composition of supplementary panels.

### **Employment clauses which did not receive any comments**

- Rate of remuneration for part-time employees (clause 95)
- Classification and reclassification of officers and positions in the teaching service (clauses 99 & 100).
- Transfer of officers in the teaching service (clause 102)
- Long service leave (clauses 103-109)
- Resignation, retrenchment, physical or mental incapacity and termination of officers of the teaching service (clauses 114-117)
- Use of staff of public service administrative units (clause 120)

## Financial

The Bill includes a number of provisions that deal with financial matters for government schools, preschools and children's services. These include materials and services charges for schools, charges for certain overseas and non-resident students and provision for the recovery of amounts payable to the Commonwealth.

Two responses were received on these clauses in the Bill; both opposed provision for materials and services charges.

## Miscellaneous

Part 14 of the Bill sets out a range of miscellaneous clauses, including:

- General powers for exemption
- Use of school premises for school and community purposes
- Confidentiality of person information
- Protections, privileges and immunities
- Evidentiary provisions in respect of proceedings under the Act
- Provision for service of notices and documents
- Provision for regulations.

Four respondents provided comments in respect of these provisions.

Three comments related to clause 132 which allows for use of school premises for community purposes. Responses sought clarification of the operation of this clause in relation to non-government schools and also put forward suggestions about alignment of values of those using facilities with public education. Two further responses were about regulations for religious education which could be made under clause 137(2)(d).