

# Key Issues Paper No. 2



## Understanding Legislation and School Exclusions in Australia<sup>1</sup>

Australian schools use fixed-term and permanent exclusionary practices to help 'manage' unproductive student behaviour (Sullivan et al. 2014). Under Australia's federal system of governance, the use of such exclusionary practices is guided by state and territory governments, who hold constitutional responsibility for education and have direct oversight of the state schooling systems. Each state and territory has its own legislative constructions including Education Acts, Education Regulations and Ministerial Orders, which guide decisions about school discipline and the use of school exclusions (see Figure 1).

As of 2019, Australian state and territory education legislation and associated legislative documents identified as responsible for guiding disciplinary school practices identified are:

- [Education Act 2004 \(ACT\)](#)
- [Education Act 1990 No 8 \(NSW\)](#)
- [Education Act 2015 \(NT\)](#)
- [Education Regulations 2015 \(NT\)](#)
- [Education \(General Provisions\) Act 2006 \(Qld\)](#)
- [Education Regulations 2012 \(SA\)](#)
- [Education Act 2016 \(Tas\)](#)
- [Secretary's Instruction: No 4 for suspension, exclusion, expulsion or prohibition of state school students \(Tas\)](#)
- [Education and Training Reform Act 2006 \(Vic\)](#)
- [Ministerial order No. 1125: Procedures for suspension and expulsion of students in government schools \(Vic\)](#)
- [School Education Act 1999 \(WA\)](#)
- [School Education Regulations 2000 \(WA\)](#)

---

<sup>1</sup>To cite this paper: Sullivan, A., Johnson, B., Tippett, N. & Manolev, J. (2020). Understanding Legislation and School Exclusions in Australia, *School Exclusions Study Key Issues Paper No. 2*. University of South Australia. doi: 10.25954/5f5eff8b4ddf6

- [CEO instruction 1/2018: Recommendation for exclusion when a student has made intentional physical contact with a staff member \(WA\)](#)
- [Directive from the Director General to principals of all schools: Required action to be taken with students fighting or publishing videos of fighting \(WA\)](#)

An analysis of legislative documents in Queensland, South Australia, Victoria and Western Australia shows that the legislative constructions attend in different ways to several key aspects of school disciplinary exclusions, including:

- Terminology;
- Grounds for enacting specific forms of exclusionary practices;
- Considerations required when using exclusionary practices;
- Duration of specific forms of exclusionary practices;
- Authority to enact exclusionary practices;
- Provision and process for appeals;
- Provision of education during school exclusion;
- Reporting and notification requirements;
- Processes supporting the reintegration of excluded students; and
- Processes of procedural fairness.

There are differences between the legislative frameworks of the states and territories in how they define exclusionary practices, what behaviours warrant exclusion, who has the authority to sanction exclusions, the duration of exclusions, and the provision of appeal processes (see Key Issues Paper #1: School Exclusionary Practices in Australia).

The way in which each legislative construction is framed varies. Some seem to encourage school exclusions as an effective means to manage repetitive or 'difficult' student behaviour in schools. In doing so, the legislation clearly frames individual students as the 'problem' when civil relationships break down in schools; and largely ignores the influence of complex home lives, poor teaching and overly-punitive discipline practices that compromise student–teacher relationships.

Other legislative constructions seem to frame school exclusions in ways that suggest it is preferable to keep the students attending school. Such legislation directs that schools give consideration to the circumstances and needs of the student; minimising lost instructional time; and providing support to enable the reintegration of the student as quickly as possible.

The way in which legislative polices are framed is important because research shows that it influences practices. For example, recent research in the UK examined contemporary policies and practices to examine why Scotland has much lower rates of exclusion than England, Wales and Northern Ireland (McCluskey et al., 2019). The research found that Scotland's success in reducing exclusions was due to a policy focus on prevention and attending to deep levels of disadvantage. In Australia, Graham (2018) examined the impact of a legislative policy change in Queensland that provided principals with greater disciplinary power. She found that suspension rates more than doubled as a result of this legislative change.

## School Exclusions Study Overview

The School Exclusions Study aims to investigate the extent to which exclusionary practices such as suspensions and exclusions are used by schools across Australia to discipline students and manage diverse student populations; the reasons why students are suspended and excluded; the profile of students who are suspended and excluded; and the impact on the health, welfare and academic

achievement of children who are suspended and excluded from Australian schools. The research will provide the evidence base for policy and school-based interventions that enhance the success of vulnerable children in our schools.

An initial pilot study is focussing on Queensland, South Australia, Victoria and Western Australia to examine the policies and practices that shape and influence the use of school exclusions to address problematic student behaviour. Data includes legislative constructions guiding school disciplinary practices, and publicly available school exclusions data.

For further information please see [www.schoolexclusionsstudy.com.au](http://www.schoolexclusionsstudy.com.au)

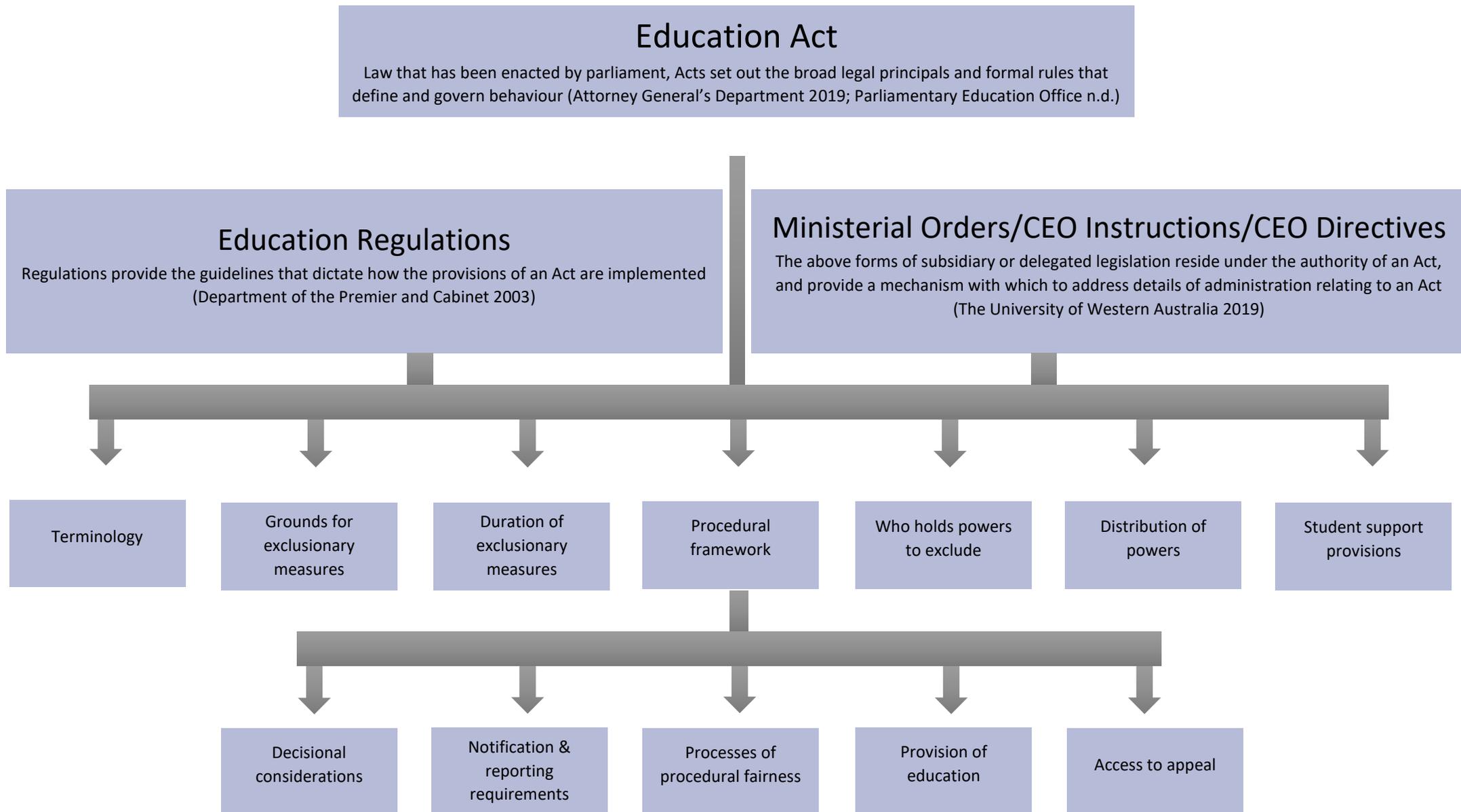
## Acknowledgements

The School Exclusions Study is being conducted by researchers at the University of South Australia (UniSA). The following Partner Organisations have contributed funds and/or in-kind support to this Project:

- [UNICEF Australia](#)
- [The Commissioner for Children and Young People, South Australia](#)
- [Commissioner for Children and Young People, Western Australia](#)
- [Commission for Children and Young People, Victoria](#)
- [Australian Secondary Principals Association](#)
- [Australian Primary Principals Association](#)
- [South Australian Secondary Principals Association](#)
- [South Australian Primary Principals Association](#)
- [Queensland Secondary Principals' Association](#)
- [Western Australian Secondary School Executives Association](#)

## References

- Attorney General's Department 2019, Government of South Australia, <https://www.legislation.sa.gov.au/Web/Information/Understanding%20legislation/UnderstandingLegislation.aspx>
- Parliamentary Education Office n.d. <https://www.peo.gov.au/learning/fact-sheets/bills-and-laws.html>
- Department of the Premier and Cabinet 2003, Government of WA, <https://www.slp.wa.gov.au/faq.nsf/Web/Topics/C39627DF9C3527E348256CA8000DCBE5?openDocument>
- Manolev, J., Sullivan, A., Tippett, N. & Johnson, B. (2020). School Exclusionary Practices in Australia, *School Exclusions Study Key Issues Paper No. 1*. University of South Australia. doi: 10.25954/5f5efa981b62b
- Sullivan, A. M., Johnson, B., Owens, L. D., & Conway, R. N. F. (2014). Punish Them or Engage Them? Teachers' Views of Unproductive Student Behaviours in the Classroom. *Australian Journal of Teacher Education*, 39(6), 43-56. <http://dx.doi.org/10.14221/ajte.2014v39n6.6>
- The University of Western Australia 2019, Legislation: Delegated legislation, <https://guides.library.uwa.edu.au/c.php?g=324818&p=2177280>



1.

Figure 1. How legislation influences school exclusionary practices