

Investigation into Victorian government
school expulsions

August 2017

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The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the Ombudsman Act 1973, I present to Parliament my *Investigation into Victorian government school expulsions*.

A handwritten signature in black ink, reading "Deborah Glass". The signature is written in a cursive, flowing style.

Deborah Glass OBE
Ombudsman

14 August 2017

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Foreword

["Andrew"] is lucky, he's got us in his corner but other kids don't have that and where do they end up? Where are those kids? I know where they are, they're not at school, they slip through the cracks, they end up in the justice system.

- Parent of "Andrew" to VO investigators

We're looking at the individual child, not the effect that child has on the system. And we need to look at both... the teacher hasn't taught the grade for a week because this kid's going berserk.

School Principal to VO investigators

Every year several hundred children are expelled from government schools. While this is a tiny fraction of the number of children in those schools, the impact of expulsion on the child, their family, and potentially, the wider community cannot be overstated. A disproportionate number of expelled children have a disability, are in out of home care, or identify as Aboriginal and Torres Strait Islander. Some come from backgrounds of significant trauma. Some are only five or six years old.

The official number is likely to be only a fraction of the number of children informally expelled, on whom no data is kept. Somewhere between hundreds and thousands of children each year disengage from formal education at least in part as a result of pressure from schools. We simply do not know where they end up.

But we do know that some 60 per cent of those in the youth justice system had previously been suspended or expelled from school, and over 90 per cent of adults in our prisons did not complete secondary school. The link between educational disadvantage and incarceration is not new, but remains compelling.

That there are so few children formally expelled must also be a testament to the many dedicated teachers and principals who deal with challenging behaviour by children daily. There is no doubt that such children present a problem not only for a school and its staff, but for other children, whose learning may be compromised by disruptive behaviour. This is a difficult balancing act which many schools are obliged to manage repeatedly.

But while everyone should be able to work and study in a safe environment, expelling a child simply shifts the "problem" of the child's behaviour from one part of the system to another - to another school, another department, to a parent who cannot cope - potentially entrenching or escalating those behaviours. In many of the cases we reviewed, had the school been willing - or better supported - to deal with the behaviour, the expulsion may not have been necessary.

A key purpose of the investigation was to find out whether expulsions complied with the Ministerial Order - which includes ensuring the student is provided with other educational and development opportunities. What we found was a confused and incomplete picture. There were so many gaps in the Expulsion Reports and data in 2016 it was not possible to answer the question with any certainty. But we can say that some two-thirds of expulsions failed to comply on at least one count, with the lack of information suggesting that this number may well be considerably higher.

We obtained evidence of the lack of early intervention for Aboriginal students, that while help was available it was often brought in too late; for students with disabilities, that instead of providing extra assistance, supplementary funding is used to justify limiting a child's attendance at school. The influence of trauma - such as exposure to family violence - was also powerfully present in the cases we examined.

[Being expelled is] just another layer of trauma for my child that I now have to address...yes he's doing well at this school but he would have done well at that school if we'd been able to do the things that we said they were going to do...

- Parent of "Ben" to VO investigators

Expulsion for drug use was also prevalent, for reasons ranging from a single instance of being under the influence, to dealing. In any event, as experts point out, expulsion is, at best, a short term solution, that does not address the underlying cause but shifts the problem elsewhere.

A child goes to another school, they've been expelled so straight away they're starting behind the 8 ball. They're kids... they've got enough problems trying to get through everything as it is... It destroys families... I don't think it's really looked upon, how big a step it is and how much it affects people.

- Parent of "Daniel" to VO investigators

My investigators went out across Victoria, meeting parents, community groups and others with an interest. These regional visits greatly enriched the breadth and quality of evidence we received, and many of the cases are included in this report. Some of the stories we heard were heartbreaking. It is clear from these cases that these were not bad children; many were children who had bad things happen to them. I thank all of those who spoke with my investigators or made submissions, for their honesty, openness and assistance.

Our investigation found some things being done well – individual good work by both principals and regional department officials demonstrating the success of some approaches, as well as broader programs such as the Education Justice Initiative, which attempts to re-engage young people in the criminal justice system back into education. Other worthwhile initiatives and reforms were also observed after our investigation had begun, and I encourage the department to continue and build on this important work.

My jurisdiction does not extend to non-government schools and in any event no data is available for expulsions there, although common sense dictates that what goes on in one part of the education sector has an impact on the other. The paucity of data across the sector – haphazard and incomplete where it does exist – makes it impossible for us to determine just how bad the problems are.

But there can be no doubt that students from vulnerable groups are over-represented in the numbers of those expelled – formally and informally. Given the autonomy of schools in this area, the department is struggling to address the issues.

How can we ever justify expelling a five-year-old? A welcome start would be recognising that while expulsion remains an option of last resort, no child should ever be expelled from the state's education system as a whole. A commitment to supporting early intervention is also vital. The challenging behaviour of children is frequently rooted in trauma, disability or mental health. The investment not made in supporting schools to deal with this behaviour will almost inevitably require a vastly greater investment later, elsewhere, to deal with their challenging behaviour as adults.



Deborah Glass
Ombudsman

Executive summary

1. On 1 September 2016 the Ombudsman announced an investigation into expulsions at Victorian government schools. The investigation was prompted by four primary factors.
2. First, although the office does not receive high numbers of complaints about expulsions, those that were made contained similar grievances: families felt that expulsions were unfair or disproportionate; that there was a lack of opportunity to be heard; and a lack of support to find another school for their child following expulsion.
3. Second, the office was aware of work by the Youth Affairs Council of Victoria in early 2016 into expulsions and student engagement, from which it was apparent that the sector was concerned that expulsions were growing, vulnerable groups were over-represented and that informal expulsions were an ongoing and potentially larger issue.
4. Third, this office requested expulsion data from 2013 to 2016, which revealed expulsions had increased by 25 per cent from 2014 to 2015. This increase seemed to confirm that this was an escalating issue.
5. Finally, youth crime in Victoria was increasing with a small cohort of children reportedly responsible. The negative correlation between disengagement from education and difficulties for young people, including contact with the youth justice system, is well evidenced.
6. The investigation was an attempt to explore these issues and give the most complete picture of expulsions in government schools recently undertaken. The lack of data, described further in this report, means it is not the full picture and there is more to be done within the department and government.

Education in Victoria

7. The system in Victoria is complex. It is shaped by shifts in educational trends and teaching methodology; population and demographic changes; the needs of the labour market; and importantly, the policy objectives of the Commonwealth and State governments of the day.
8. As with other states, Victoria's education system is further complicated by the fact that it exists parallel with the non-government education sector comprised primarily of Catholic and independent schools. Additionally, both government and non-government schools have complex arrangements where a mix of Commonwealth and State funding makes up what is spent on a student's education.
9. For principals and teachers working within this complex system, their job is a difficult one. They are required to balance the high needs and difficult behaviour of some students with the educational needs of all students, as well as the safety and welfare of both students and teachers. In these circumstances, it is appropriate for expulsion to be considered as an option where other methods of dealing with the student's behaviour have failed – that is, it truly is a last resort.
10. But, in many cases, schools do not appear to be equipped with the resources, expertise and assistance, within the school and from the department more broadly, to provide the necessary support to students with higher needs. The behaviour of these children may be extremely challenging, but it must be within the power of our education sector to support these children rather than simply shifting the challenge of the student's behaviour from one school to another.

Formal expulsions

Vulnerable students

11. The number of students expelled each year from government schools in Victoria is low when compared to the total student population. In 2016 there were 278 students formally expelled.
12. The investigation's analysis found that in 2016 most expulsions occurred for students between years 8 and 10 and that boys were vastly over-represented. Perhaps more concerning, however, were the instances of children in the early years of primary school also being expelled. It is difficult to conceive of circumstances where the behaviour of children as young as five or six could be of such magnitude that expulsion is the only option available.
13. Those who were expelled were often from vulnerable student groups. The investigation's analysis of formal expulsions in 2016 found that students in out of home care, students with disabilities and Aboriginal and Torres Strait Islander students are all over-represented in expulsion figures.
14. Students in out of home care face significant challenges in their life and the importance of education for these students cannot be overstated. They represented less than two per cent of the student population but over five per cent of expulsions. While there are safeguards in place if expulsion of a student in out of home care is being considered, the Expulsion Reports do not give sufficient detail as to whether these safeguards are being enacted or are effective.
15. Aboriginal and Torres Strait Islander students were another vulnerable group who make up a small percentage of the total student population, again less than two per cent but accounted for approximately six per cent of the expulsions that occurred in 2016. While departmental policy states that if a school is considering expelling an Aboriginal and Torres Strait Islander child it should consider contacting the region, the investigation received evidence that this is not occurring regularly.
16. Perhaps the most affected group of vulnerable students were those that receive funding for a disability. They are the subject of several case studies throughout this report and the vulnerability of the students and the sense of powerlessness felt by their families can be acute. Some of the stories told are concerning and deeply sad.
17. The decision to expel students with a disability raises significant human rights issues. It is troubling that even though children's rights are not absolute, the Ministerial Order does not make a single reference to the *Charter of Human Rights and Responsibilities Act 2006*.
18. Many of these vulnerable students had suffered childhood trauma which was regularly cited by witnesses and in submissions as a key area of concern regarding expulsions. Students suffering from trauma-related behavioural problems were identified as presenting a significant challenge for schools and one they were perhaps ill-equipped to handle.
19. It must be acknowledged that there are bound to be other stories of students and their families who have been greatly supported at their schools and have not been expelled; a couple of these stories are reflected in this report. However, this report largely draws attention to cases where the system has failed students.

20. The case studies detailed in this report are evidence of the need to continue to improve our education system and support those in most need. To its credit, upon reading a draft version of this report the department offered to contact the families of the students in the case studies to offer any support they may need.

Observations of expulsions

21. Ministerial Order 625 gives principals the power to expel students from government schools. The Ministerial Order sets out the grounds under which a principal can expel a student and what processes need to be followed. It seeks to protect students from unfair expulsions.
22. The investigation identified serious concerns about whether the requirements of the Ministerial Order are being adhered to and whether the department is providing sufficient support and oversight to ensure principals fulfil their obligations when expelling a student. In the majority of expulsions the requirements of the Ministerial Order were not met.
23. This includes the failure to meet basic requirements of the Ministerial Order, including that expulsions are recorded in the department's student record system which did not occur in nearly two third of cases. In other instances the Expulsion Reports reviewed did not demonstrate that a student's behaviour was of such a magnitude that expulsion was the only available response.
24. Perhaps most concerning were the instances where there was no effective plan to find the student a new school. Sixty-one of the students expelled in 2016 were out of school for between three and twelve months following their expulsion. Considering the importance of education, having students out of school for many months following an expulsion is clearly not appropriate or compliant with the Ministerial Order.
25. It is important that the department strengthen its oversight of expulsions to ensure that the legal requirements as set out in the Ministerial Order are met.
26. There is also a clear need for improvements in ensuring students facing expulsion are granted procedural fairness. A young person at risk of expulsion ought to have an equal or greater expectation of protection than an adult facing potential termination of employment, not less. Yet it is not mandatory that principals conduct a thorough investigation of the allegations against a student before proceeding with expulsion. While departmental guidance states that it is best practice to conduct investigations, there is no obligation to, and failure to do so does not of itself create a right of appeal.
27. Inconsistency was also apparent across the expulsions, with the magnitude of behaviour that would lead to expulsion varying across schools. This was most striking in the expulsions that were related to drugs: a student caught smoking marijuana one time was punished the same way as a student dealing drugs in a school.

Informal expulsions

28. Formal expulsions are not the full story. There was clear evidence, although a paucity of data, suggesting that informal expulsions are more prevalent, despite departmental policy prohibiting their use.
29. Formal and informal expulsions, along with a myriad of other reasons students stop attending school, mean that thousands of school-aged children exit the education system each year. There needs to be every attempt made to identify these students and keep them in education.

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30. There were 278¹ students expelled in 2016 yet the department states that around 6,800 students per year disengage from government education between year 9 and 12. It can only be concluded that somewhere between these two figures is an indicative number for informal expulsions.
 31. There is a clear need for the department to improve its processes so that it knows why students leave school and can begin to get some sense of the number of informal expulsions and what can be done to prevent them.
 32. This does not mean that there is never a benefit in a change of school for a student. For whatever reason, the relationship between a school and a student may have broken down and for all concerned a fresh start is needed. But it is important that this process is appropriately managed and that the department has sufficient oversight of it.

Collection and use of data

33. Government agencies need reliable and accurate data to inform good policy making and enable them to provide evidence-based advice to government. During the investigation, obtaining accurate data from the department regarding school expulsions was a constant source of difficulty.
34. The expulsion figures for 2016 took several months to confirm and there remained inconsistencies in this data. Key information such as the number of expulsions within vulnerable student groups or what the outcomes were for expelled students was incomplete, not available or only produced, with some effort, to assist with this investigation.

35. Given what is known about the adverse outcomes for disengaged young people, including increased contact with the criminal justice system, it is critical that the education system comply with the Ministerial Order and places children in education or training as a matter of urgency if they are expelled.
36. The lack of data makes it difficult if not impossible for the department to recognise patterns in which student groups are being expelled and to subsequently develop policies to address any issues identified. There is a clear need for better data and oversight systems.

Effect of disengagement from education

37. Considering the relatively low numbers of expulsions it may be tempting to ask if this issue is worth such attention. The testimony of parents in this report of the effect expulsion has on students and their families itself justifies the attention and the need to highlight these issues and drive improvement.
38. But the impacts of expulsion and disengagement echo beyond these students and their families. The positive link between education and better results in a person's life is well established. Similarly, a negative correlation exists between disengagement from education and difficulties for young people, including contact with the criminal justice system. This correlation highlights the importance of ensuring expulsions are used as a last resort and that expelled children are supported to engage in education.

¹ In 2016 eight expulsions were subsequently overturned on appeal meaning 270 students were expelled. The analysis in this report is based on the 278 instances of expulsion prior to any successful appeal. If an appeal is successful the expulsion is removed from the student's record.

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39. In 2015, 1,094 young people involved in the youth justice system were surveyed and 60 per cent had previously been suspended or expelled from school. As a witness to the investigation stated when asked the effect of expulsion, 'A whole lot of nasty stuff I'd say. What a terrible start to a life, seriously'.
 40. Despite this, the department has delivered some effective programs to re-engage students and reduce expulsions. The LOOKOUT Centres, Navigator Program and Education Justice Initiative are all positive programs effectively assisting particularly vulnerable groups and keeping them in education.
 41. Similarly the experience of many of the students in the case studies in this report, who after their expulsion are thriving at their new schools, show that when the right supports are put in place it is not beyond the education system to help the most vulnerable students
 44. The absence of data and the department's limited oversight of school expulsions, has contributed to the department's failure to identify and address the prevalence of expulsions among vulnerable groups and schools' non-compliance with the Ministerial Order, which seeks to protect students from unfair expulsions.
 45. Formal expulsions are not the full story. There is clear evidence, although a paucity of data, suggesting that informal expulsions are more prevalent, despite departmental policy prohibiting their use. These do not get recorded or allow for the mandated supports to assist a student to further their education as set out in Ministerial Order for formal expulsions.
 46. As with formal expulsions there is evidence in the form of case studies and submissions that vulnerable groups may be more likely to be informally expelled but inevitably there is no data available to confirm this. The department does not routinely keep records of why students move from one school to another.

Conclusions

42. There are comparatively few formal expulsions from Victorian government schools each year. However, for those students who are expelled, this is a significant punishment and can have a profound impact on their lives. Apart from the rejection and trauma that being expelled may cause, children disengaged from school are also more likely to come in to contact with the youth justice system.
43. The data collected by the department is haphazard, incomplete and insufficient to make informed policy decisions with respect to expulsions. This is surprising given the profound impact an expulsion may have on a student.
47. There is a clear case for more to be done regarding informal expulsions, although the issue cannot be addressed adequately until the department is able to measure the scale of the issue and fill in the significant gaps in its data.

Scope and methodology

Terms of reference

48. On 7 September 2016 the Ombudsman wrote to the Minister for Education, the Hon James Merlino MP and the Secretary of the Department of Education and Training (the department), Ms Gill Callister notifying of her intention to conduct an own motion investigation into the expulsion of students from Victorian government schools.
49. On 8 September 2016 the investigation was publicly announced, with the following terms of reference:
- Whether the department is complying with *Ministerial Order No. 625 – Procedures for Suspension and Expulsion* (the Ministerial Order) and policies regarding government school expulsions, which include:
 - ensuring relevant parties are notified that an expulsion is being considered
 - ensuring a conference is conducted with the affected student
 - ensuring the student is provided with other educational and development opportunities
 - providing a fair and effective appeals process.
 - Whether vulnerable or at-risk students are over-represented in expulsion numbers and whether the department is effectively addressing any such issues.
 - Whether the data collected by the department regarding expulsions is sufficient to inform departmental policy-making and programs.
 - Whether the department is monitoring and preventing instances of informal expulsions, which occur outside the formal expulsion process.
50. The investigation was prompted by four primary factors.
51. First, although the office does not receive high numbers of complaints about expulsions, those that were made contained similar grievances: families felt that expulsions were unfair or disproportionate; that there was a lack of opportunity to be heard; and a lack of support to find another school for their child following expulsion.
52. Second, the office was also aware that through early 2016 the Youth Affairs Council of Victoria (YACVIC) was working on a report into expulsions and student engagement². As part of its work YACVIC held a forum in April 2016, which was attended by education professionals, advocates, academics and two officers from the Ombudsman. It became clear at this forum that those present had a sense that expulsions were growing, vulnerable groups were over-represented and that informal expulsions were an ongoing and potentially larger issue. What was lacking was the data and detailed information to confirm this.
53. Third, this office requested expulsion data from 2013 to 2016, which revealed expulsions had increased by 25 per cent from 2014 to 2015³. This increase seemed to confirm the sense at the YACVIC forum of an escalating issue.

² The final report was released in June 2016 titled *Out of sight, out of mind? Exclusion and inclusion of students in Victorian schools*.

³ Figures provided from the Department of Education and Training, 17 August 2016.

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54. The department has since advised that the expulsion data it provided did not include expulsions that occurred after August during a school year. The department provided revised figures showing that there were in fact 267 expulsions in 2014 and 309 in 2015, an increase of over 15 per cent⁴.
55. Finally, youth crime in Victoria was increasing with a small cohort of children reportedly responsible. The negative correlation between disengagement from education and difficulties for young people, including contact with the youth justice system, is well evidenced.
56. The department was given the opportunity to respond to the Ombudsman's draft report on 8 June 2017. The department provided responses on 26 and 27 June 2017, both of which have been fairly set out in this report.

Jurisdiction

57. The investigation was undertaken pursuant to section 16A of the *Ombudsman Act 1973*, which provides that the Ombudsman may conduct an own motion investigation into any administrative action taken by or in an authority, the definition of which includes a department. The Ombudsman Act does not provide jurisdiction for the Ombudsman to investigate non-government schools.
58. Under section 23(2) of the Ombudsman Act, the Ombudsman also has the power to enquire into or investigate whether any administrative action 'is incompatible with a human right set out in the *Charter of Human Rights and Responsibilities Act 2006*'.

59. The primary focus of the investigation was the involvement of the department in relation to Victorian government school expulsions, rather than investigating individual expulsion cases through the relevant school. The investigation did not specifically look at suspensions.
60. It is worth clarifying what an expulsion is compared with a suspension. The department defines expulsion and suspension as follows:

Expulsion is the process of permanently excluding the student from the school in which he or she is currently enrolled⁵.

Suspension is a disciplinary measure that involves temporary removal of a student from classes or school approved activities for a specified period of time. Your child will be allowed to return to class or the school approved activity after the set period of suspension⁶.

61. While the investigation was concerned primarily with expulsions there will on occasion be reference to suspension in this respect. This is particularly the case where a student was initially suspended in the immediate aftermath of their behaviour and the decision was then made to start the expulsion process.
62. This report does not include direct evidence to the investigation from students who have been expelled. As was noted in the Ombudsman's recent *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, changes to the Ombudsman Act in 2012 prevent the Ombudsman from interviewing people under 16 years of age during an investigation, regardless of whether they are accompanied by a parent or guardian.

⁴ Figures provided from the Department of Education and Training, 28 November 2016.

⁵ Department of Education and Training, *Procedures for Expulsion*, page 1.

⁶ Department of Education and Training, *Procedures for Suspension*, page 1.

Approach

63. The investigation involved:

- calling for and receiving 16 submissions from community, education and similar organisations as well as private individuals
- analysing the department's policies and processes regarding school expulsions, including:
 - *Ministerial Order No. 625 – Procedures for Suspension and Expulsion* - 2014
 - *Ministerial Order No. 184 – Procedures for Suspension and Expulsion (Superceded)* - 2009
 - *Student Engagement Policy* - 2017
 - *School Policy and Advisory Guide* - 2017
 - *Expulsion Process Flowchart* - 2014
 - *Student Resource Package 2016 Guide*
 - *Program for Students with Disabilities – operational guidelines for schools 2017*
 - *Student Support Group Guidelines* - 2015
 - *Marrung Aboriginal Education Plan* - 2016
 - *Out of Home Care Education Commitment* - 2011
 - *Drug Education Policy* - 2017
- undertaking cross-jurisdictional comparisons in Australia and overseas to compare education and expulsion policies and practice
- reviewing the reports for all 278 school expulsions in the 2016 school year
- reviewing all 22 expulsion appeal files for 2016
- reviewing data provided by the department relating to school expulsions as well as data on vulnerable student groups, including:
 - Aboriginal and Torres Strait Islander students
 - students with a disability
 - students who receive funding for a disability, behavioural or learning difficulties
 - students in out of home care
 - students who are clients of Child Protection
 - students from linguistically or culturally diverse backgrounds
- conducting four regional visits during which investigators:
 - held six sessions in regional towns and cities⁷ within the four departmental regions to enable members of the public to meet with investigators face to face and discuss their experience
 - met with 13 stakeholder and community groups to discuss education issues in their communities
- conducting 25 voluntary interviews with 32 witnesses including:
 - 13 parents of expelled students
 - 12 departmental employees and school principals
 - 7 witnesses from other organisations including Professor Michael Kidd, a senior academic who specialises in researching the links between education and crime
- meeting with eight stakeholder and community or education groups in Melbourne
- engaging a clinical psychologist, Ms Katrina Streatfeild to review a sample of Expulsion Reports for indications of childhood trauma.

⁷ The six towns and cities were Geelong, Ballarat, Wodonga, Shepparton, Mildura and Moe.

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64. The Ombudsman's opinion and the reasons for that opinion are being reported to the Secretary of the department pursuant to section 23(1) of the Ombudsman Act.
65. In accordance with section 25A(3) of the Ombudsman Act, any individual who is identifiable, or may be identifiable from the information in this report, is not the subject of any adverse comment or opinion. They are named or identified in this report as:
- the Ombudsman is satisfied that it is necessary or desirable to do so in the public interest, and
 - the Ombudsman is satisfied that identifying those persons will not cause unreasonable damage to the persons' reputation, safety or wellbeing.

Anonymity

66. Throughout this report, case studies detail the experience of students and their families during expulsions, both formal and informal. The case studies do not identify the student or their families for privacy reasons and given the age and vulnerability of many of the students involved. In some cases the age and year level of the student has been removed to further protect their identity.
67. In addition, the case studies do not name individual schools as this may result in the identification of the students in case studies.
68. For these reasons, the names used in the case studies throughout this report are not the real names of the students involved. References to evidence that may identify the student have also been removed.

Education in Victoria

The complexity of education in Victoria

69. The government education system in Victoria was established in 1872 with the passing of the *Education Act 1872*, establishing education as ‘free, secular and compulsory’⁸.
70. While this simple principle underpins the Victorian education system, the reality of how the education system functions is far more complex. It is shaped by shifts in educational trends and teaching methodology; population and demographic changes; the needs of the labour market; and importantly, the policy objectives of the Commonwealth and State governments of the day.
71. As with other states, Victoria’s education system is further complicated by the fact that it exists parallel with the non-government education sector comprised primarily of Catholic and independent schools. Additionally, both government and non-government schools have complex arrangements where a mix of Commonwealth and State funding makes up what is spent on a student’s education.
72. A review of school funding, undertaken for the department by the former Premier the Hon Steve Bracks, *Greater Returns on Investment in Education*, noted:
- Victoria’s funding allocation model is a mix of needs based, cost based, capped, and legacy funding, and lacks a clear link to future strategy. In addition, funding is hard to understand as it is allocated simultaneously to schools, regions, programs and workforces, creating complexity and a lack of coherence, and constraining innovation⁹.
73. The complexity of the Australian education system is unique, as was observed by the late Professor Jack Keating:
- No other OECD country has separate and mostly publicly-funded school sectors competing against each other for the economically and educationally advantaged student market. No other country allows such arrangements to have such a heavy impact on education policy¹⁰.
74. This means that the student population in Victoria is mixed. In 2016 there were 1,524 Victorian government primary and secondary schools with 588,908 students enrolled, comprising:
- 350,583 students in primary school
 - 224,221 students in secondary school
 - 12,503 students in special schools
 - 1,601 students in language schools¹¹.
75. A further 343,199 students were educated in Catholic and independent schools¹², or nearly 37 per cent of the student population.
76. This inherent complexity in the education system presented difficulties during the investigation. The number of expulsions in the non-government school sector is not publicly available and therefore it is not possible to determine if expulsion rates are comparable across the government and non-government sectors.

8 <http://www.bastow.vic.edu.au/about-us/history-of-education-in-victoria> accessed on 4 May 2017.

9 Department of Education and Training, *Greater Returns on Investment in Education: Government Schools Funding Review*, December 2015, page 5.

10 Department of Education and Training, *Greater Returns on Investment in Education: Government Schools Funding Review*, December 2015, page 4.

11 <http://www.education.vic.gov.au/Documents/about/departments/brochurejuly.pdf> accessed on 24 January 2017.

12 *ibid.*

77. The investigation made enquiries with both the Victorian Registration and Qualifications Authority¹³ and the Victoria Curriculum and Assessment Authority¹⁴, and neither was able to provide a figure for expulsions in non-government schools.

78. One of the Regional Directors from the department commented on the difficulty this presents:

There's a missing piece in that puzzle... and there's government funding that goes to those schools and so in the community interest...if you know something about government schools why shouldn't we know about other schools¹⁵?

79. The department was also unable to provide data to demonstrate how expulsions in non-government schools impact the government school sector, such as, how many students expelled in the non-government sector are subsequently enrolled in government schools and what the outcomes were for these students.

80. In its response to the Ombudsman's draft report the department stated:

It would be useful if the report could note that the department does not collect the reasons for school enrolment or transfers between sectors. The student transferring may not be willing to share the reason for the transfer and are not required to do so, as any enrolment in a government school is a parent's choice.

81. On top of the structural complexity of the system is the most important challenge that faces this and any other education system meeting the needs of the students. In the Victorian system the students range from Prep to Year 12, across metropolitan and regional settings, all with differing needs and vulnerabilities.

82. While it is important to acknowledge all the factors that contribute to the complexity of the Victorian education system, it is also worth noting that the investigation looked at a discrete aspect of the education system: expulsions at Victorian government schools.

Education Training and Reform Act 2006

83. The *Education Training and Reform Act 2006* is the primary piece of education legislation in Victoria, its main purpose being:

...to reform the law relating to education and training in Victoria by providing for a high standard of education and training for all Victorians¹⁶.

84. In Victoria the compulsory school age is between 6 and 17 years of age¹⁷. Under the Education and Training Reform Act there is no specific obligation placed on the State to provide students of compulsory school age an education. However, a principle of the Act is that 'universal access' to education is provided by the State through 'the establishment and maintenance of a government education and training system'¹⁸.

¹³ The Victorian Registration and Qualifications Authority is the statutory authority responsible for ensuring education providers meet quality standards.

¹⁴ The Victorian Curriculum and Assessment Authority is an independent statutory body to provide curriculum, assessment and reporting for government and non-government schools.

¹⁵ Interview with Regional Director, Department of Education and Training, 21 February 2017.

¹⁶ Section 1.1.1(1) *Education and Training Reform Act 2006*.

¹⁷ Section 2.1.1 *Education and Training Reform Act 2006*.

¹⁸ Section 1.2.2(1) *Education and Training Reform Act 2006*.

85. Further, section 1.2.2(2)(c) of the Act states:

Every student has the right to attend a designated neighbourhood government school with the exception of selective government schools that are determined by the Minister.

86. Section 2.1 of the Act places an onus on parents to ensure their children receive an education. It states:

It is the duty of the parent of a child of not less than 6 nor more than 17 years of age:

- a. to enrol the child at a registered school and to ensure the child attends the school at all times when the school is open for the child's instruction; or
- b. to register the child for home schooling in accordance with the regulations and to ensure that the child receives instruction in accordance with the registration¹⁹.

87. A parent failing this obligation can be guilty of an offence and be fined approximately \$77.50.

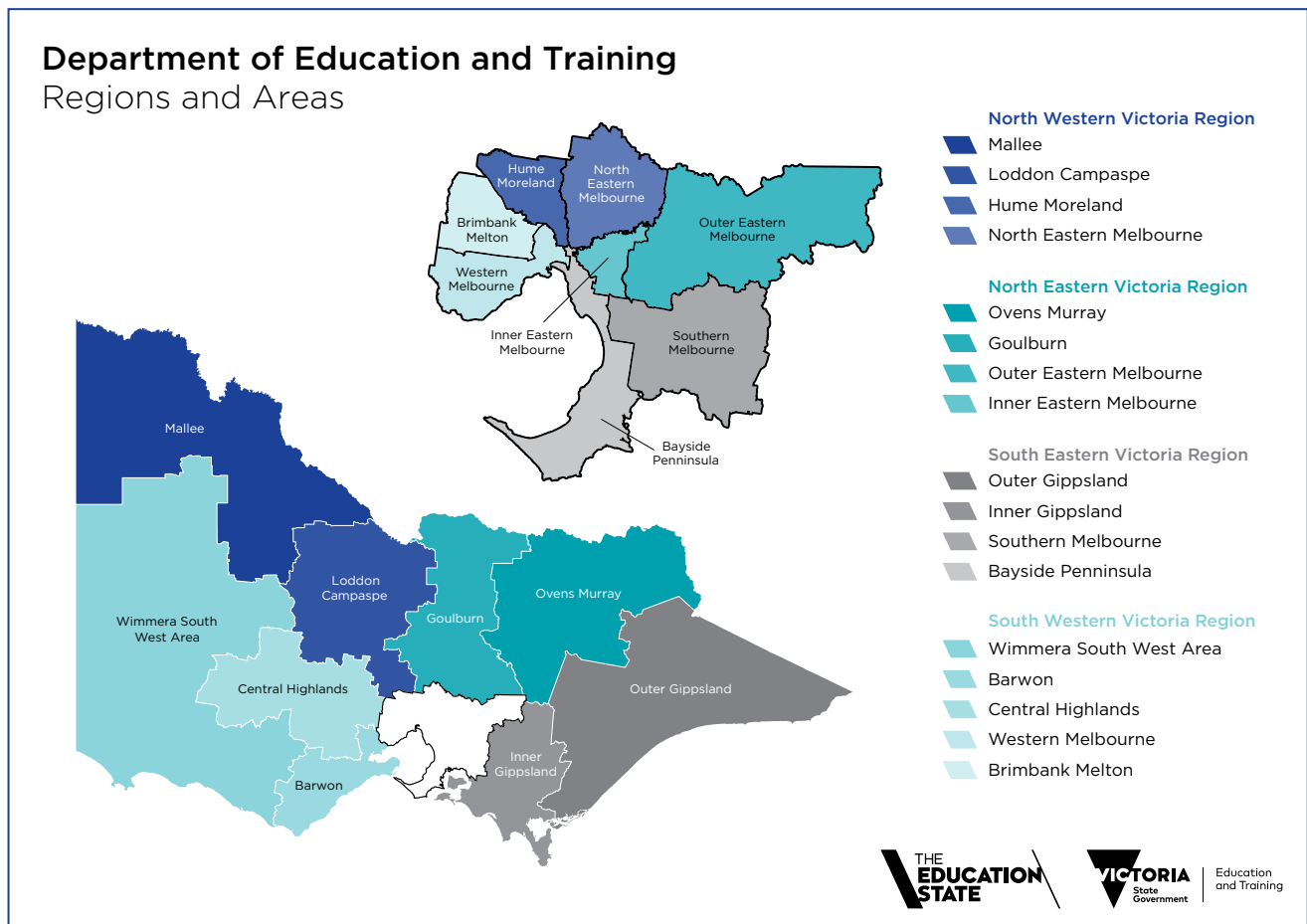
88. At present there is no legislated right to education in Victoria for children. The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) provides various rights for children; however, a right to education is not one of them.

¹⁹ Section 2.1.1 *Education and Training Reform Act 2006*.

The structure of the department

89. The department is responsible for providing education services to students through the government schooling system.

91. Each region has a Regional Director under whom sit a variety of staff who act to support schools and students within the region – including nurses, language officers, health and wellbeing officers and Koorie education officers.



Source: Department Education and Training

90. The department is organised into seven central units one of which is the regional services group. This group comprises four regions across the state, each covering a mix of metropolitan and regional schools. These regions provide much of the support and services to schools as well as support to students and their families. This report largely concentrates on these regions as the representative of the department in dealing with expulsion matters.

92. The four regional offices are further broken down into 17 areas throughout the state to provide further localised support to schools and students. The introduction of 17 areas within the regional structure is one of the changes under the State Government's Education State Initiative and aligns with the regional structure used by the Department of Health and Human Services.

93. In responding to the Ombudsman's draft report the department provided the following information about changes to its regional model:

The new regional model

The new regional operating model, Learning Places, established 17 local Area teams within the existing four regions and provided approximately 150 additional VPS and executive staff.

Area teams are building a multi-disciplinary approach to supporting school improvement and strong child and learner outcomes.

These new Area teams will facilitate enhanced local decision making, and stronger partnerships that support transition from early childhood to school and into further education, training or employment.

The additional staff went into functions identified by principals as key resources required to provide needed support to schools and ensure accountability.

The regional model provides a similar approach to services and support to all schools and early childhood providers, not just non-metro schools.

However, it is anticipated that non-metro schools in particular will notice a more local corporate DET presence and experience stronger, closer relationships with key staff.

Additional staffing benefits

Of the 150 additional staff supporting schools in the DET regional model:

30 additional Senior Education Improvement Leaders (SEIL), who are executives that play a critical role in assisting the school improvement efforts of principals and managing principal performance and development. This increase reduced the SEIL ratio from 1 per 45 school to 1 per 25 school.

34 Education Improvement Leaders, who work with SEILs on improving learning and development outcomes of schools.

Additional VPS staff to support schools managing operational and administrative issues. Support roles include OHS and Facilities Support (12 FTE), Emergency Management Support (4 FTE), School Professional Development (4 FTE), and Transitions (8 FTE).

17 additional Area Executive Directors that work closely with principals and schools to drive strong school improvement outcomes and lead multi-disciplinary teams that deliver place-based solutions based on a deep knowledge of the local community and context.

Source: Department Education and Training
Response to Ombudsman's Draft Report

The Education State initiative

94. The State Government's 2015-16 Budget included \$4 billion in funding for early childhood, schools and training²⁰ to support its Education State initiative. The initiative sought to 'revitalise our education system and transform Victoria into the Education State'²¹ and set targets under the following themes:

- Learning for Life (Excellence in reading, maths, science and the arts, and in critical and creative thinking)
- Happy, Healthy and Resilient Kids (Building resilience and physical activity in our children)
- Breaking the Link (Ensuring more students stay in school and eliminating the connection between outcomes and disadvantage)
- Pride and Confidence in our Schools (Making sure every community has access to excellence, in every school and classroom)²².

95. Some of the new programs and structural changes that have come about from the Education State are referred to throughout this report.

²⁰ <http://www.education.vic.gov.au/about/educationstate/Pages/vision.aspx> accessed on 12 April 2017.

²¹ *ibid.*

²² *ibid.*

Collection and use of data

96. Government agencies need reliable and accurate data to inform good policy-making and enable them to provide evidence-based advice to government. For this reason the investigation included the following term of reference:
- Whether the data collected by the department regarding expulsions is sufficient to inform departmental policy-making and programs.*
97. The department usually only keeps expulsion numbers for each school year that happen before the August census. The full year expulsion numbers the department provided for 2014, 2015 and 2016 were eventually provided at the Ombudsman's request to assist the investigation.
98. During the investigation, obtaining accurate data from the department regarding school expulsions was a constant source of difficulty. Although the Ministerial Order requires that each expulsion be recorded in the CASES21 system²³ by the principal, the department advised that this only occurs in slightly more than a third of expulsions²⁴. This means that there was no reliable electronic record of expulsions.
99. The department's regional offices collect information and data about expulsions. The department's central office requested the number of expulsions for 2016 and expulsion documents (including Expulsion Reports, Notice of Expulsions and appeal documents) from the regional offices as they are the custodians of this information under Ministerial Order 625. Even doing so, trying to establish precisely how many students were expelled from government schools in 2016 was problematic.
100. The department provided expulsion numbers on 1 February 2017 that showed there had been 279 expulsions in 2016 with:
- 93 in the North East Victoria Region
 - 63 in the North West Victoria Region
 - 55 in the South East Victoria Region
 - 68 in the South West Victoria Region.
101. The department provided copies of all the Expulsion Reports collected by the regional offices to the investigation. A detailed analysis was undertaken by the investigation and found a total of 266 Expulsion Reports – 13 less than the department's figure:
- 81 in the North East Victoria Region (12 less than the 1 February figure)
 - 64 in the North West Victoria Region (1 more than the 1 February figure)
 - 55 in the South East Victoria Region (the same as the 1 February figure)
 - 66 in the South West Victoria Region (2 less than the 1 February figure).
102. The missing files were requested from the department, which provided an additional 10 files. The investigators therefore had a total of 276 Expulsion Reports – three less than the department's February 2017 figure:
- 81 for the North East Victoria Region (12 less than the 1 February figure)
 - 65 for the North West Victoria Region (2 more than the 1 February figure)
 - 62 for the South East Victoria Region (7 more than the 1 February figure)
 - 68 for the South West Victoria Region (the same as the 1 February figure).

23 CASES21 is a software program used within the schools for data entry and reporting to record details such as attendance, timetabling, enrolments and budgeting.

24 Email from Department of Education and Training to Victorian Ombudsman, 13 December 2016.

103. After again requesting confirmation of the final expulsion number for 2016 the department confirmed on 24 May 2017, approximately six months after the initial request, that there had been 278 expulsions in 2016. This figure included eight expulsions that were subsequently overturned on appeal.

104. The 278 expulsions were broken down by region as follows:

- 83 for the North East Victoria Region
- 64 for the North West Victoria Region
- 62 for the South East Victoria Region
- 69 for the South West Victoria Region.

105. The figures used throughout this report are based on 278 expulsions.

106. The fact that there was such difficulty in ascertaining the number of students expelled meant that more detailed data was either not available or difficult to obtain. The investigation sought a breakdown of numbers of students expelled by:

- region
- age
- gender
- students who identify as Aboriginal and Torres Strait Islander
- students whose parents are asylum seekers, refugees or recent migrants
- students with a disability
- students in out of home care²⁵.

107. However, the department only keeps data on the gender of students expelled; the year level of the student; and whether the student identifies as Aboriginal and Torres Strait Islander. In its response to the Ombudsman's draft report the department stated:

It would be useful for the report to reflect on the challenges and limitations in attributing student expulsion data across different student cohorts. For example, it may not be appropriate to form 'cohort specific' judgments when each case represents a range of student specific factors.

DET also recognises that students with mental illness could be represented across more than one of the above listed cohorts, and particularly within 'students with a disability'.

108. Again the investigation's analysis revealed that even the number of Aboriginal and Torres Strait Islander students expelled was not certain. Departmental figures initially indicated that 19 Aboriginal and Torres Strait Islander children were expelled but this figure was later revised to 16. However, the investigation's analysis of the Expulsion Reports found only 14 students identified as Aboriginal and Torres Strait Islander owing to limitations in the data recorded in the reports. There is a tick box to record a child's Aboriginal and Torres Strait Islander status, but 24 of the Expulsion Reports did not record this. Notwithstanding this, the department provided data to confirm the number of Aboriginal and Torres Strait Islander students expelled.

109. The department also does not routinely keep a record or any data on the outcomes of students who are expelled, despite the requirement for principals and regional offices to ensure that the student is provided with other educational and development opportunities.

110. The figures on expulsions used throughout this report are as accurate as they can be; and wherever possible the data used is that which the investigation obtained from its analysis of the Expulsion Reports.

²⁵ Letter from Victorian Ombudsman to the Department of Education and Training, 6 July 2016.

Formal expulsions

111. The number of students expelled each year from government schools in Victoria is low when compared to the total student population. In 2016 there were 278 students formally expelled.
112. However, as will be detailed in this section, those that are expelled are often from vulnerable student groups. This figure also does not include students who are informally expelled or otherwise become disengaged from education.
113. The impact of expulsion on students can be profound. The Australian Institute of Family Studies has stated:
- A child excluded from a school suffers a number of detriments, including disruption to education and a blow to that child's self-esteem. Expulsion is also likely to be felt as a rejection. The language used by students – 'kicked out of school' or 'thrown out' – is an indication that exclusion is seen and felt as a hostile and aggressive act, and many children give up on the education system after being excluded from their school²⁶.
114. The power for principals to expel a student from government schools is derived from Ministerial Order No. 625 – Procedures for Suspension and Expulsion (the Ministerial Order)²⁷. The order came into operation from 1 March 2014 and replaced the previous Ministerial Order 184.
115. The Ministerial Order allows principals alone to expel a child from a government school. The power to do so cannot be delegated to any other teacher at the school. A principal can expel a student if the student:
- behaves in such a way as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person;
 - causes significant damage to or destruction of property;
 - commits or attempts to commit or is knowingly involved in the theft of property;
 - possesses, uses or sells or deliberately assists another person to possess, use or sell illicit substances or weapons;
 - fails to comply with any clear and reasonable instruction of a staff member so as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person;
 - consistently engages in behaviour that vilifies, defames, degrades or humiliates another person based on age; breastfeeding; gender identity; disability; impairment; industrial activity; lawful sexual activity; marital status; parental status or status as a carer; physical features; political belief or activity; pregnancy; race; religious belief or activity; sex; sexual orientation; personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes; or
 - consistently behaves in an unproductive manner that interferes with the wellbeing, safety or educational opportunities of any other student.²⁸

²⁶ Ludbrook, Robert *Children's Rights in school education*, Australian Institute of Family Studies, Citizen child: Australian law and children's rights, December 1996.

²⁷ Ministerial Order No. 625 – *Procedures for Suspension and Expulsion*, Clause 11(9).

²⁸ Ministerial Order No. 625 – *Procedures for Suspension and Expulsion*, Clause 3(6)(a-g).

116. Expulsion can occur if a student engages in one or more of the above categories of behaviour and:

...the student's behaviour is of such magnitude, that having regard to the need of the student to receive an education compared to the need to maintain the health, safety and wellbeing of other students and staff at the school and the need to maintain the effectiveness of the school's educational programs, expulsion is the only available mechanism²⁹.

117. The Ministerial Order also sets out certain requirements and processes that must occur before and after an expulsion. Many of these requirements and other departmental policies will be discussed throughout this chapter; however, some of the key points of the Ministerial Order are:

- The principal must convene a behaviour review conference prior to an expulsion.
- The principal must advise the student and their relevant person of the behaviour review conference and encourage them to attend.
- The principal must provide the student and their relevant person a Notice of Expulsion.
- An Expulsion Report must be completed and provided to the Regional Director.
- Students and their relevant person must be given the opportunity to appeal an expulsion.
- The principal in collaboration with the regional office must ensure the student is provided with 'other educational and development opportunities as soon as is practicable'³⁰.

118. Ministerial Order No. 625 replaced the previous Ministerial Order No. 184, which had been in effect since 1 July

2009. As with the current Order, the power to expel was one held exclusively by the principal of the school.

119. One key difference between the two Orders is the involvement of the department's regional offices in expulsions. Except with respect to students in out of home care, principals are not required to inform the Regional Director that expulsion of a student is being considered.

120. Ministerial Order No. 184 required the Regional Director be informed and nominate a regional officer to attend a student support group meeting to discuss the prospect of an expulsion and ensure that 'the appropriate education, training and employment options are considered for the student and assist in implementing the course of action agreed'³¹.

121. When Ministerial Order No. 625 came into effect in 2014, this requirement was removed and departmental involvement was reduced. It is no longer required that Regional Directors be advised when expulsion is being considered, only that they are notified when an expulsion has occurred.

122. The role of the regional officer from the department has been replaced by a Regional Approved Support Person (RASP), who witnesses said, is often a principal or assistant principal from a nearby school who sits on the behaviour review conference. As a result the region usually only becomes aware of an expulsion after the fact (except with respect to students in out of home care) and is not involved unless the expulsion is appealed.

29 Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 10(b).

30 Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 12(1).

31 Ministerial Order No. 184 - *Procedures for Suspension and Expulsion*, Clause 14(2).

123. The role of the RASP is to provide the principal with advice and support during the process. Their involvement was a point of contention with some of the parents interviewed during the investigation. To some, having a principal's peer sit on behaviour review conferences lacks independence. One parent said:

They all know each other. How can they independently assess whether or not the process has been followed when it could be them next week³²?

124. This difference between the level of regional involvement in school matters is broadly a matter of government policy and the varying levels of school autonomy favoured.

125. School autonomy is a term used to describe policies that place more decision making power with schools as opposed to a larger bureaucracy such as an education department. The process of school autonomy started in Victoria in the 1970s and became particularly established by the *Schools of the Future* reforms of the early 1990s, which gave schools the authority to select their own staff and control larger amounts of their budgets³³.

126. Since this time there has been a tendency for some education policies to move between greater and lesser school autonomy depending on the government of the day's policy priorities.

Analysis of 2016 expulsions

127. The investigation reviewed all 278 Expulsion Reports for 2016³⁴ and the analysis will be referred to throughout this chapter of the report. However, it is useful at this point to provide some high level data that the analysis revealed.

128. As far as this office can ascertain this is the first time such an analysis has been conducted. There is little evidence that the department undertakes detailed analysis of the expulsion data it collects. As mentioned earlier in this report, expulsion numbers are only routinely collected for expulsions that occur before August each school year and there are issues with how accurate these are.

129. An example of an Expulsion Report is attached at Appendix 1. The form is the only consistently held account of each expulsion in a school year.

32 Interview with Parent H, 4 January 2016.

33 Gammage D (2008) Three Decades of Implementation of School-Based Management in the Australian Capital Territory and Victoria in Australia. *International Journal of Educational Management*. 22(7): 664-675.

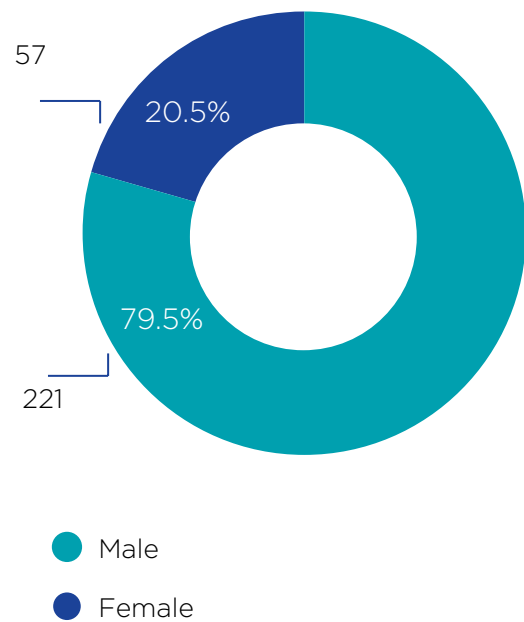
34 The expulsion files were de-identified so that student's personal details, including name, date of birth and address were not included.

130. The analysis revealed that of the 278 expulsions:

- 221 were male and 57 female.
- 232 were secondary school students and 43 were primary school students³⁵.
- The North East Region had the most expulsions with 83; South West had 69; North West had 64; and South East had 62.
- At least 14 were Aboriginal and Torres Strait Islander³⁶.
- At least 15 were in out of home care³⁷.
- 93 were identified as having a disability or mental illness.
- 46 received Programs for Students with Disabilities funding.
- 113 had at least one specific educational need.
- 164 had what could be considered a relevant residential circumstance, ranging from a student who lives with only one of their biological parents to more serious cases where students live in out of home care.

131. As can be seen in the following pie chart boys are vastly over-represented in terms of expulsions. In 2016 51.9 per cent of students in government schools were male, yet they account for 79.5 per cent of expulsions.

Chart 1: Expulsions by gender



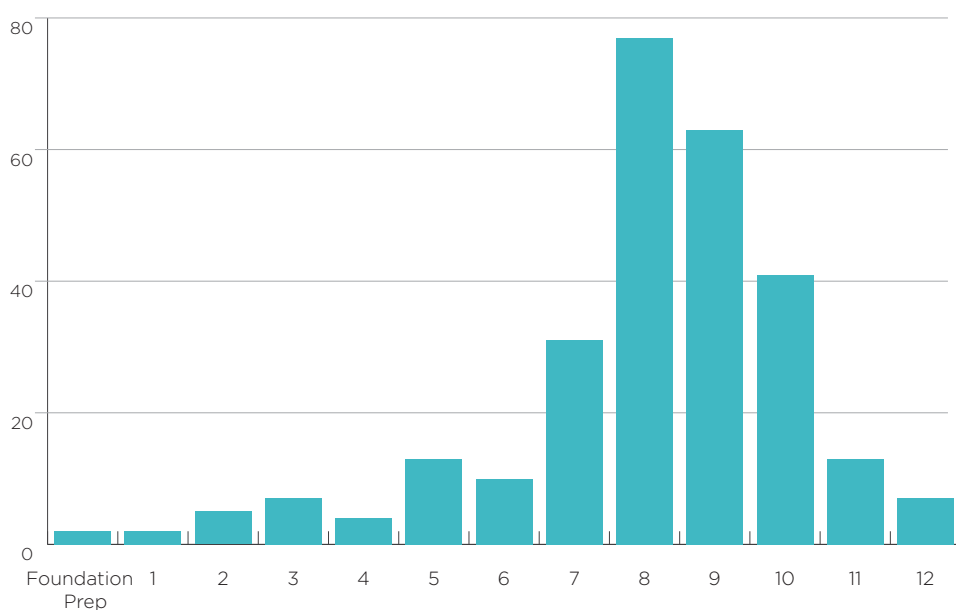
³⁵ Three students were ungraded, usually because they attended a specialist school.

³⁶ This information was not recorded in 24 reports. The department provided a total of 16 expulsions of Aboriginal and Torres Strait Islander students, we were unable to reconcile these numbers based on the information provided.

³⁷ This information was not recorded in 24 reports.

132. The investigation also broke down the expulsions by year level. As can be seen from the graph below, expulsions are more common in secondary school and peak in years 8 and 9.

Graph 1: Expulsions by year level in 2016



133. The Ministerial Order allows principals to expel a student on one or more of seven separate grounds. The investigation’s analysis revealed the following:

Table 1: Grounds for expulsions³⁸

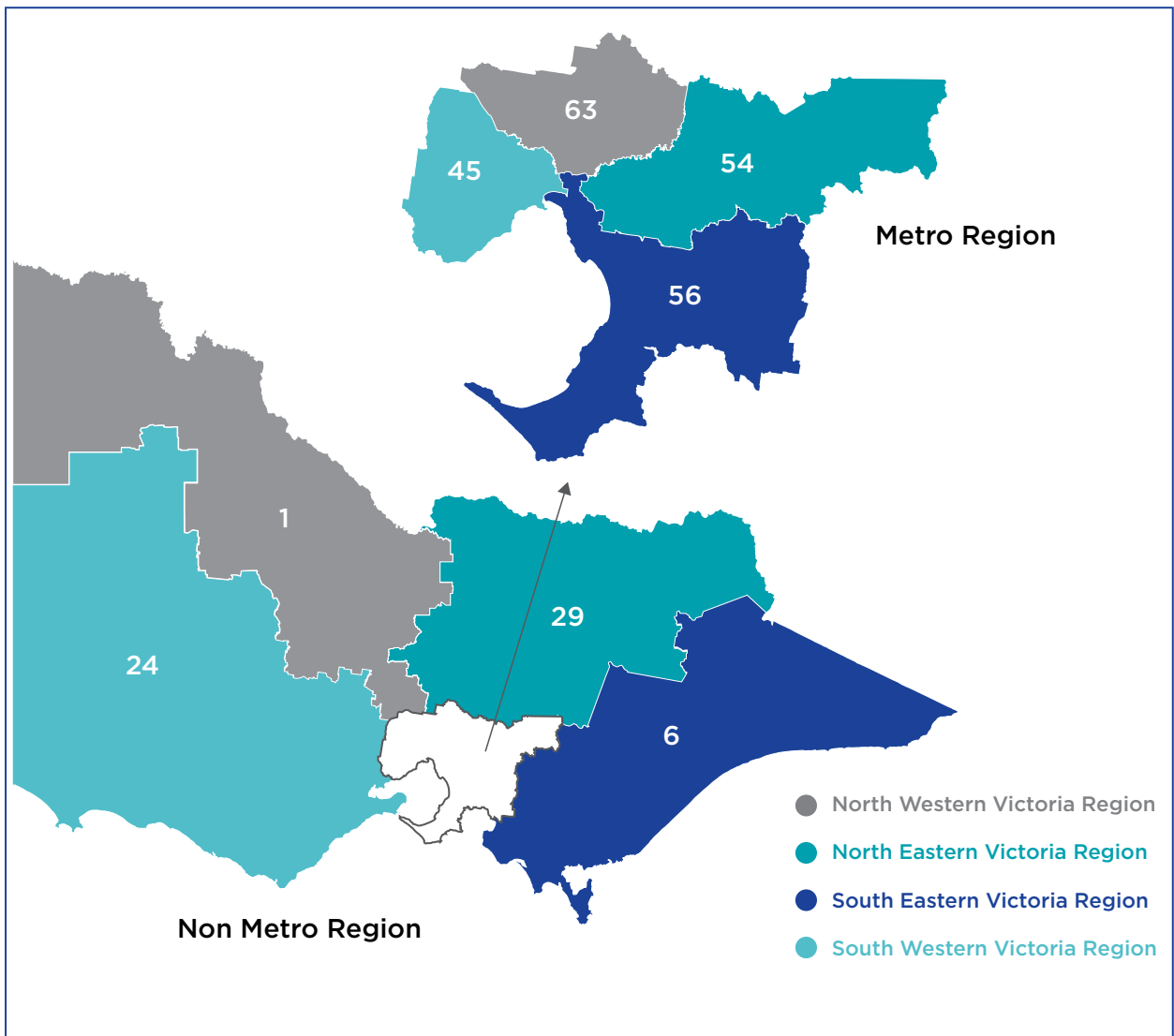
Grounds	Number of cases where grounds were recorded
Threat to health/safety	224
Failure to comply with instruction	165
Consistently behaving in an unproductive manner	141
Use or sale of drugs	72
Consistently engaging in behaviour that vilifies, defames or humiliates	28
Damage or destruction of property	27
Theft	10

³⁸ Multiple grounds may be recorded in one Expulsion Report. In responding to the Ombudsman’s draft report the department stated that its figures under Grounds for Expulsion differed slightly to those represented. While these differences are minor the investigation acknowledges that the data represented is based on its own analysis.

Expulsions across the state

134. The map below shows the 278 expulsions across Victoria by departmental region. This is further broken down into metropolitan and non-metropolitan locations.

Expulsion by region



Observations from Expulsion Reports

135. Initially the investigation planned to assess all 2016 expulsions and come to a view on whether each expulsion had occurred in accordance the Ministerial Order. Upon commencing the investigation it became apparent that this was not going to be possible.
136. As has been noted, the Expulsion Report and Notice of Expulsion are the only consistent record of each individual expulsion and acts as the document of record for the department. While the investigation was provided with all Expulsion Reports for 2016, some corresponding Notices of Expulsion were unavailable or incomplete. For this reason the investigation's analysis was based on the Expulsion Reports.
137. The Expulsion Reports varied in detail and often did not provide sufficient information to decide if the Ministerial Order had been adhered to.
138. The Ministerial Order states that a principal:
- ... must properly, fairly and without bias consider all relevant matters in making their decision. The principal must determine whether the expulsion is appropriate when compared to:
 - a. the behaviour for which the student is being expelled;
 - b. the educational needs of the student;
 - c. any disability of the student;
 - d. the age of the student; and
 - e. the residential and social circumstances of the students³⁹
139. Apart from the fact that there is an element of subjectivity involved in making such an assessment, the varying levels of detail in the Expulsion Reports meant that it was not always possible to know enough of the student's background and personal circumstances to determine if these matters had been properly considered.
140. While it may have been possible to explore the individual circumstances of each of the 278 students through their student file and other school records, it was not considered appropriate to request further personal information about the students.
141. Instead, the following section details observations from a review of the Expulsion Reports and highlights instances where it would appear there were failings against the Ministerial Order, in accordance with term of reference one:
- Whether the department is complying with Minister Order No. 625 – Procedures for Suspension and Expulsion.*

³⁹ Ministerial Order No. 625 – *Procedures for Suspension and Expulsion*, Clause 11(11).

Magnitude of behaviour

142. The Ministerial Order requires that expulsions occur when:

the student's behaviour is of such magnitude, that having regard to the need of the student to receive an education compared to the need to maintain the health, safety and wellbeing of other students and staff at the school and the need to maintain the effectiveness of the school's educational programs, expulsion is the only available mechanism⁴⁰.

143. In determining whether the behaviour is of such a magnitude, the principal must weigh the needs of the student to receive an education against the need to maintain the health, safety and wellbeing of other students and staff and the need to maintain the effectiveness of the school's educational programs.

144. The investigation of the 2016 Expulsion Reports considered that there were at least 120 students expelled in circumstances where the behaviour as described did not appear of such a magnitude that expulsion was 'the only available mechanism'.

145. Further highlighting this point are the differences in the magnitude of behaviour that led to some expulsions; some for serious and/or continuing conduct and others for comparatively minor or one-off infractions. The following examples give some illustration of the spectrum of conduct resulting in expulsion. They also reveal the nature of the difficult behaviour that principals and teachers sometimes have to manage:

- A secondary school student was expelled after repeatedly failing to comply with staff instructions. This included using her mobile phone in class; not bringing appropriate equipment to class; not attempting or completing any work in class; and using aggressive and offensive language towards staff and other students.
- An early primary school student was expelled for hitting an assistant principal. At the time of this incident, the school was aware of significant upheaval in the child's life including Department of Health and Human Services' involvement after her mother tried to relinquish care to her grandmother.
- A secondary school student was suspended for assaulting another student on school grounds. While suspended, she came to the school, located the other student dragged her to the ground and repeatedly punched her until she was removed by a staff member. She was subsequently expelled.
- A secondary school student was expelled after bringing a knife to school. He said that it was for his own protection but threatened to kill a student and an assistant principal.
- A secondary school student was expelled for a history of failing to follow the reasonable instructions of staff. This included frequently wearing the incorrect school uniform and refusing to remove 'offending' items and walking away from conversations with staff. The student who regularly attended school was described as capable, but frequently late without a reason, and was said to disrupt the learning environment of the class by using offensive language directed at staff or students. He was also caught smoking on school grounds several times.

⁴⁰ Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 4(10)(b).

- A secondary school student attended a behaviour review conference that was initiated because of a number of occasions where he had failed to comply with a reasonable instruction given to him by a teacher; responded to a teacher in an 'abusive' manner; and left the school grounds without permission. At the behaviour review conference it was agreed that the student could remain at the school if he abided by certain conditions. After a month another behaviour review conference was held because the student had continued to leave the school grounds contrary to the conditions he had agreed to. As a consequence he was expelled.
- A secondary school student was expelled for vandalising a school toilet block. The Expulsion Report indicates that he had been enrolled at the school for four months, after a previous expulsion from another school earlier in the year. The school reports two suspensions for 'serious breaches of the... student wellbeing and engagement policy' but does not describe these incidents.

School responses to drugs

146. The difference in the magnitude of behaviour that resulted in expulsions in 2016 is also apparent in the way principals responded to drug issues.
147. Experts in the field of drugs and alcohol abuse warn against school expulsions for drug use. Mr Sam Biondo, Chief Executive of the Victorian Alcohol and Drug Association said that expelling a student for drug use was a 'short term' solution. He said 'we need to get the drug and alcohol messaging right at schools... expelling young people from school isn't going to solve any of the school's problems'⁴¹.
148. Similarly, Mr Andrew Bruun, Chief Executive of Youth Support and Advocacy Service said that expelling a student meant the student became 'disconnected from their school and their local community' and put the student at risk of 'losing their sense of purpose and belonging [and] could potentially cause [the student] a whole lot of stress at a time when [the student] is choosing to take drugs as a way of escaping distress'⁴².
149. The department's *Drug Use Policy* sets out how schools should approach reducing drug use and associated harm, respond to drug-related incidents, and provide support for students involved in drug use. Under the policy, schools must:
- provide students with drug education prevention and intervention programs
 - involve parents or guardians and the wider school community in drug-related curriculum and wellbeing issues
 - prohibit possession, use, distribution and selling of illicit drugs and unsanctioned licit drugs on school premises or at any function or activity organised by the school
 - develop policies to support the management of drug-related incidents
 - make every effort to retain students in the education system because students are often at greater risk if disengaged from school⁴³.
150. The Ministerial Order allows principals to expel students for possessing, using, or assisting another person to possess illicit substances. This broad discretion allows the same consequence to be applied to a student dealing drugs and a student suspected of being under the influence of drugs on a single occasion.

⁴¹ Cook, Henrietta and Jacks, Timna *Second Victorian school embroiled in drug scandal* The Age, 20 April, 2016.

⁴² *ibid.*

⁴³ Department of Education, *School Policy and Advisory Guide* accessed at <http://www.education.vic.gov.au/school/gs/spag/safety/pages/druguse.aspx> on 11 April 2017.

151. The investigation's analysis of the 2016 Expulsion Reports shows that there were approximately 70 students expelled for incidents involving drugs. This ranged from instances of possession to more serious cases of sale or distribution. One principal interviewed for the investigation stated she does not expel for marijuana use:

...because it's department policy which errs on the side of wellbeing. Unless the risk of having [the student] there is not tolerable...My experience of kids bringing marijuana or alcohol to school is that it is usually one joint between 15 kids⁴⁴.

152. Some examples of the varying types of drug related expulsions included:

- Two secondary school students were expelled after they left the school at lunch time, smoked marijuana and then returned to school.
- A secondary school student was expelled in fourth term after two students at the school stated that they had purchased marijuana from him in first term and three other students said that they had recently seen him passing a joint to other students.
- A secondary school student was expelled after his school principal was alerted that the student had sold marijuana to students from another school. When questioned by the principal, the student handed over 85 grams of marijuana. The police were contacted.

153. In May 2017, there were a number of media reports about the suspension of students from a Victorian government school for drug possession. In response a spokesperson from the department said:

Our schools are a reflection of our communities and unfortunately the problems that we see in our community sometimes raise their heads in our schools.

...

Where a student becomes involved with drugs they are supported by the school, including through a wellbeing team, student support officers and via other agencies⁴⁵.

Failure to consider options other than expulsion

154. Under the Ministerial Order principals are required to include 'a summary of the options considered at the behaviour review conference and why expulsion was considered necessary'⁴⁶.

155. To record that this requirement has been met, each Expulsion Report has a section titled '*Summary of other options considered to address students behaviour*'. Some of the Expulsion Reports contained little detail under this heading and did not provide evidence of 'other options considered'.

156. The Expulsion Reports for two students expelled from the same school for two separate instances included the identical statement:

Given the magnitude of the issue, the school believes that it warrants sanctions through expulsion. [Student and his family] will be provided with a list of contacts for external support services.

44 Interview with Principal A, 3 March 2017.

45 Hore, Monique, Schoolgirl caught with Ketamine at Mentone Girls' Secondary College formal, Herald Sun, 1 May 2017.

46 Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 11(15)(f).

The school will also provide help with enrolment in another school so that he can continue with his secondary schooling. Student Services staff at [the school] have offered to work with Student Services at other schools to assist with [student's] transition.

157. Two other Expulsion Reports about separate incidents, again at the same school, recorded the following text under this heading:

Given the magnitude of the issue and the trauma to the [student] who was assaulted, the school believes that it warrants sanctions through expulsion.

158. Other examples of these summaries in the 2016 Expulsion Reports include:

- A primary school student with a trauma background was expelled after attending the school for two weeks. The summary stated, '[School] cannot help [student]. She has demonstrated that she is not going to cooperate with the Principal team and that her distrust of adults will prevent establishing a workable relationship'.
- A secondary school student was expelled for leaving school grounds smoking marijuana. The summary stated 'Alternative educational settings (transport was an issue)'.
- A secondary school student was expelled for a physical altercation with another student. The summary stated, 'Behaviour card, wellbeing, meetings with co-ordinators'.

'Thorough investigation' of alleged behaviour

159. The Ministerial Order is silent on whether or not principals are required to investigate allegations against students before making the decision to expel them. However, the Department's *Student Engagement and Inclusion Guidelines: Expulsion Procedures* state that the principal should conduct 'a thorough investigation'.

160. The Notice of Expulsion and Expulsion Report requires that principals provide evidence of the student's alleged conduct. The Notice of Expulsion asks for 'details of student's behaviour (including time and date) and the evidence (and witnesses) relied upon to support the grounds for expulsion'. The Expulsion Report requires a 'detailed description of the student's behaviour including a summary of the evidence relied upon by the school'.

161. A number of expulsions were undertaken by principals without providing the evidence required in the documentation. For example:

- The Expulsion Report for a secondary school student contains a list of allegations, such as 'spoke rudely [to a teacher]' and 'posed a threat to the wellbeing of another student by making sexually inappropriate and degrading comments...' However there is no mention of evidence or information demonstrating that the principal investigated these allegations before proceeding with the expulsion.
- The Notice of Expulsion for a secondary school student provides no dates or evidence but makes broad statements such as '[the student] consistently engages in high-level disruption of classes...' and 'he encourages other students to dissent teachers' instructions, and engages in arguments over the discipline of other students'. There is nothing recorded indicating that an investigation took place before the decision to expel the student was made.

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- In the Expulsion Report of a primary school student, the section in which the principal was expected to describe the behaviour and the evidence relied on by the school was left blank. The relevant section in the Notice of Expulsion stated that ‘...on this day [student] came to school in a very agitated manner. He then proceeded to use abusive language towards staff and students. He became threatening towards staff picking up a steel star picket. He re-entered the building when asked not to, he punched the Principal in the left shoulder and then began throwing furniture and other equipment around’. The Expulsion Report noted that the student received additional funding for severe behaviour disorder and has bipolar disorder and anxiety.
 - The Expulsion Report and Notice of Expulsion for a secondary school student contained the following list of behaviours: ‘ongoing threats to students, engaging in physical violence, ongoing refusal to complete school work and walking off on staff when they attempt to discuss her behaviour, ongoing swearing and rudeness to students who find this behaviour intimidating, attending school grounds (but not attending classes) and engaging in intimidatory behaviour including bringing members of her family to classrooms where she knows a person with whom she is fighting, making threats to students online, attending the grounds [of the school] with another student and her parent knowing the other student planned an assault on a student at school for ‘payback’ following the student’s family reporting the assault to the police.’ Other than the 1 September date there is no additional information or evidence to support the expulsion grounds.
 - The Expulsion Report and Notice of Expulsion for a secondary school student contained no dates or specific evidence to support the expulsion grounds. For example both documents contain allegations that the student ‘continually and consistently abused a range of staff over an extended period of time. This has included teachers, Education support staff as well as office staff and leadership’. The documents also state that the student ‘continually and consistently leaves the classroom that he is in and negatively engages with other students across the school impacting on their ability to learn and be a part of their classrooms’
162. The Australian Institute of Family Studies has commented that:
- While Australia has clear-cut procedures and effective remedies for workers wrongfully dismissed from their jobs, the procedures and remedies for students facing expulsion from school are often confusing and unfair. Many young people who have experienced expulsion report feeling a deep sense of grievance⁴⁷.
- ### The results of a changed approach
163. During the investigation, the Regional Directors for each of the four regions from 2016 were interviewed. Following her interview, the Regional Director of the North Western Victoria Region provided a short overview of a recent experience at one of the schools in her region.

⁴⁷ Ludbrook, Robert *Children’s rights in school education*, Australian Institute of Family Studies, Citizen child: Australian law and children’s rights, December 1996.

164. The Regional Director said the school had a strong focus on academic achievement but also had high levels of expulsions. Twelve to 18 students were expelled in each year from 2013 to 2016. The Regional Director described the school's analysis of its situation:

We had high rates of students being exited from class for misbehaviour, and of students being suspended or expelled for incidents involving disruption, defiance and aggression. Student survey data showed us that students didn't feel safe. Staff opinion data also indicated that our teachers perceive our students' behaviour to be more problematic than staff at other secondary schools⁴⁸.

165. The regional office supported the school to seek advice from experts in student wellbeing and engagement and commenced a project to improve the social and emotional skills of the students at the school.

166. The Regional Director said the project involved the school implementing a 'Social and Emotional' learning curriculum; providing teachers with additional training and development; shifting from reactive approaches to student behaviour to positive behaviour support model; and partnering with parents to implement the new program.

167. Since the project commenced, the Regional Director reports that there has been an almost 50 per cent reduction in students being removed from class or suspended for misbehaviour and that feedback from teachers and students indicates student resilience and emotional self-awareness has increased.

168. Significantly for the investigation, there was a reduction in the number of students expelled from 12-18 in 2013-15 to four in 2016.

Vulnerable groups

169. The investigation sought to understand how vulnerable groups are affected by expulsions and therefore included the following term of reference:

Whether vulnerable or at-risk students are over-represented in expulsion numbers and whether the department is effectively addressing any issues.

170. The Ministerial Order and departmental policies provide some additional requirements where expulsion is being considered for vulnerable groups. The Ministerial Order requires that a principal who is considering expelling a child in out of home care 'must' inform the Regional Director before an expulsion occurs⁴⁹.

171. However, departmental policy and the Ministerial Order are less prescriptive for others. For Aboriginal and Torres Strait Islander students, the *Principal Checklist for Expulsions* states that the principal 'consider' contacting the Koorie Education Coordinator. For students with a disability, again the checklist states that the principal 'consider' contacting the regional office for assistance.

172. The Ministerial Order does require that principals 'determine whether the expulsion is appropriate' when considering:

- a. the behaviour for which the student is being expelled
- b. the educational needs of the student
- c. any disability of the student
- d. the age of the student
- e. the residential and social circumstances of the student⁵⁰.

48 Email from Regional Director, Department of Education and Training, 22 March 2017.

49 Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 11(2).

50 Ministerial Order No. 625 - *Procedures for Suspension and Expulsion*, Clause 11(11).

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173. Within these categories are most of the student groups that are often considered vulnerable. The investigation sought to get a sense of whether certain vulnerable groups were over represented in expulsion numbers.
174. The investigation was able in part to reflect some of these more vulnerable groups via the analysis of the Expulsion Reports as well as other evidence in the form of submissions and interviews.

Aboriginal and Torres Strait Islander students

175. In recent years there have been improvements in the educational outcomes for Aboriginal and Torres Strait Islander students. The department's *Marrung Aboriginal Education Plan 2016-2026* notes:

The Year 7-10 apparent retention rate for Koorie students in Victorian government schools has increased from approximately 77 per cent in 2005 to 97 per cent in 2014⁵¹.

176. However, the same plan notes that there remains a gap 'in the learning and development outcomes between Koorie and non-Koorie learners'.

177. In its submission to the investigation, the Commission for Children and Young People noted that disrupted education was a causal factor in the challenges faced by children in its *Taskforce 1000* project. This project 'seeks to improve outcomes for Aboriginal children and young people ... by reviewing the current circumstances of the approximately 1000 Aboriginal children and young people in out of home care'⁵². The Commission stated:

The review revealed children had experienced disengagement and dislocation from education, with a high rate of suspensions and expulsions. For example, 48 of the 157 (30.5 per cent) of secondary school and 50 of the 435 (11.4 per cent) primary school students had been suspended⁵³.

178. As has been noted in this report there were between 14 and 16 expulsions of Aboriginal and Torres Strait Islander students in 2016. This represents between five and six per cent of formal expulsions in Victoria. This is despite the fact that the Aboriginal and Torres Strait Islander students make up less than two and a half per cent of the students in Victorian government schools⁵⁴.
179. While departmental policy states that if a school is considering expelling an Aboriginal and Torres Strait Islander child it should consider contacting the region, we received evidence that this is not occurring regularly.

52 *Taskforce 1000* accessed at <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/taskforce-1000> on 24 April 2017.

53 Submission from the Commission for Children and Young People, 20 January 2017, page 2.

54 Figures provided by the Department of Education and Training to Victorian Ombudsman stated there were 12,313 Aboriginal and Torres Strait Islander children in government schools in 2016.

51 Department of Education and Training, *Marrung Aboriginal Education Plan 2016-2026*, July 2016, page 10.

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180. The departmental regions have specialist staff to assist Aboriginal and Torres Strait Islander students and their families with education: Koorie Engagement Support Officers (KESOs). Above the KESOs sit Koorie Education Coordinators (KECs) one of whom was interviewed for the investigation.
181. This officer, who had previously been engaged as a KESO, said that in her experience schools do not contact these support officers when they consider expulsion. She stated:
- My experience is that it's usually too late when we get contacted and the school has already made its decision⁵⁵.
182. This lack of early intervention was an issue also raised by the peak community organisation for education and training in Victoria, the Victorian Aboriginal Education Association Incorporated (VAEAI).
183. The General Manager of VAEAI was interviewed as part of the investigation to get his view on expulsion matters he had been involved with. The General Manager advised that VAEAI had not been made aware of any expulsions in recent times. When advised that there had been as many as 19 in 2016 he stated⁵⁶:
- We have not heard of one expulsion and we'd question why we haven't heard of that...⁵⁷.
- I actually find that really disappointing to be quite honest⁵⁸.
184. The General Manager said this was particularly disappointing as VAEAI has had a longstanding partnership agreement with the State Government regarding Aboriginal education. This partnership, called *Yalca: A partnership in Education and Training for the New Millennium*, is a recommitment between the government and VAEAI to a partnership in Aboriginal education.
185. When asked if VAEAI was able to perform its role if it was not aware of the number of Aboriginal students being expelled, the General Manager said:
- Not to its fullest extent no, no you can't. Because you would want to know why they're expelled, it's not just the expulsion. It's all matters leading up to the expulsion and the processes around that. Because... you can formulate policy but you can't then formulate actions around the delivery of that policy without that knowledge and that's really bad⁵⁹.
186. In its response to the Ombudsman's draft report the department stated:
- To ensure the privacy, safety and wellbeing of all students involved in an expulsions process, DET does not provide expulsions data that can lead to the identification of individual students to any external organisation.
187. While the investigation recognises the need to protect the identity of students, this needs to be balanced with ensuring students and their families are able to access the support available to them.

55 Interview with Koorie Education Coordinator, Department of Education and Training, 25 January 2017.

56 The figure of 19 was provided by the department in February 2017 and was subsequently revised to 16 in May 2017 after the interview was conducted.

57 Interview with General Manager, VAEAI, 14 February 2017.

58 *ibid.*

59 *ibid.*

Programs for Students with Disabilities funding

188. Program for Students with Disabilities Funding (PSD funding) is supplementary funding available to schools to support students with a disability. The funding is an addition to that provided as core funding within the Student Resource Package and is provided after an application by the school.

189. The program has application timelines in February (for students commencing school) and July (for existing students) each year. February applications establish funding arrangements for the current school year, and July applications establish funding arrangements for the subsequent school year. Applications can also be submitted outside of these timelines for students with seriously deteriorating medical or behavioural conditions.

190. PSD funding is available under any of the following seven categories of disability:

- physical disability
- visual impairment
- hearing impairment
- severe behaviour disorder
- intellectual disability
- Autism Spectrum Disorder
- severe language disorder with critical educational need⁶⁰.

191. If the application meets the PSD funding eligibility criteria then there are six levels of funding available, ranging from \$6,793 to \$51,850⁶¹.

192. Witnesses to the investigation stated that the application process for PSD funding is rigorous. Although the department states it offers support services to assist schools in applying, this can be a cause of frustration for principals.

193. One principal interviewed stated:

PSD applications are due by July of each year and it usually takes 3-4 months to receive confirmation of funding and that is then available the following year.

However, the entire process of applying for [a] student is very time consuming, three tests, three parent meetings, psych appointment, speech assessment, hearing test and a very detailed support letter. All to receive funding for a student who has already been identified with an IQ below 70⁶².

194. The investigation's analysis of the Expulsion Reports found that 14 suggested that PSD funding should be considered or note that the student had previously received PSD funding.

195. The PSD funding is of particular relevance to the investigation as 11 of the 13 parents who approached the office during the investigation had students who had a disability or mental illness and had been expelled, either formally or informally.

196. The department's Student Resource Package 2016 Guide states:

Under section 32 of the Disability Discrimination Act 1992, education providers must comply with the Disability Standards for Education 2005. The Disability Standards for Education 2005 set standards for education and training providers, including Victorian government schools. To comply with the Standards education providers must make 'reasonable adjustments' to accommodate a student with a disability⁶³

60 Department of Education, *Program for Students with Disabilities - operational guidelines for schools 2017*, pages 5-6.

61 Department of Education, *The Student Resource Package 2016 Guide (Revised)*, 2016, page 33.

62 Email from Principal B, 29 March 2017.

63 Department of Education and Training, *The Student Resource Package 2016 Guide (Revised)*, page 29.

197. The Student Resource Package 2016 Guide also outlines that PSD funding is to supplement the funding already made available:

Program for Students with Disabilities resources assist schools to meet their obligations under the Disability Discrimination Act 1992; they do not define or limit the support provided by a school for a student with a disability and schools are required to consider their total budget in supporting a student with a disability⁶⁴.

198. That the existence of PSD funding does not 'define or limit' what support is available is in contrast to the experience of some parents interviewed during the investigation. The parent of a child with Autism Spectrum Disorder and Post Traumatic Stress Disorder told investigators her child received funding to have an aide for two hours per day:

He got funding for two hours of support as challenging behaviour... he had quite a serious mental health issue and he would be allowed to go to school for a couple of hours a day and then he would have to go home⁶⁵.

199. Another parent spoke of the limitations placed on their child's interactions, who had trauma-based anxiety, even if their hours were not reduced:

So he never went back into the classroom. He wasn't allowed to go on excursions. He was excluded from incursions in the school, so he might be allowed to do an activity but not when the other children were doing it. He wasn't allowed to play with the other children...and they [the other children] would all parade past him in a glass box... it was just clear glass. So all the other kids would go out to do sport or to do an activity and he would just watch them go⁶⁶.

200. Part-time attendance for students with a disability was an issue also highlighted by the Commission for Children and Young People in its submission to the investigation:

When students are only eligible for limited educational support in the form of an education integration aide for a few hours a week, the school may indicate that the student should only attend for these hours, limiting the student's potential educational achievement and capacity to form social relationships with peers, jeopardising their future potential education, training and employment opportunities⁶⁷.

201. The issue of students who receive PSD funding having reduced hours was also attested to by a departmental employee at interview:

That's a conversation I've had a lot with parents and then with schools. You cannot say they [the student] can only be at school for the time they have that funding. They are funded to be at school with their Student Resource Package for the whole day. You get extra funding under the program for students with a disability to provide an extra resource for that child⁶⁸.

202. There is no departmental policy that permits a school to place a student with a disability on reduced hours. The department's School Policy and Advisory Guide states that 'Schools must provide at least 25 hours of student instruction per week'⁶⁹, yet clearly for some students this is not occurring.

64 Department of Education and Training, *The Student Resource Package 2016 Guide (Revised)*, page 29.

65 Interview with Parent A, 9 November 2016.

66 Interview with Parent B, 7 December 2016.

67 Submission from the Commission for Children and Young People, 20 January 2017, page 4.

68 Interview with Senior Wellbeing and Engagement Officer, Department of Education and Training, 21 December 2016.

69 Department of Education, *School Policy and Advisory Guide*, accessed at <http://www.education.vic.gov.au/school/gs/spag/management/pages/hours.aspx> accessed on 8 March 2017.

203. There may be a legitimate reason for a student for a time to be placed on reduced hours. This may be based on professional advice or the student is being re-engaged in education through a gradual increase to full schools hours.

204. However, if there is not a legitimate reason and agreement between the school and the family, it presents an issue. In its 2012 report *Held Back: The experience of students with disabilities in Victorian schools*, the Victorian Equal Opportunity and Human Rights Commission said reduced hours or part-time hours ‘when a student is enrolled fulltime is a clear breach of departmental policy and of Victorian law’⁷⁰.

205. Discrimination in education is specifically addressed in Section 38 of the *Equal Opportunity Act 2010* which states:

- (1) An educational authority must not discriminate against a person—
- a. in deciding who should be admitted as a student; or
 - b. by refusing, or failing to accept, the person’s application for admission as a student; or
 - c. in the terms on which the authority admits the person as a student
- (2) An educational authority must not discriminate against a student—
- a. by denying or limiting access to any benefit provided by the authority; or
 - b. by expelling the student; or
 - c. by subjecting the student to any other detriment⁷¹.

206. The Equal Opportunity Act defines a disability as:

- a. total or partial loss of a bodily function; or
- b. the presence in the body of organisms that may cause disease; or
- c. total or partial loss of a part of the body; or
- d. malfunction of a part of the body, including:
 - i. a mental or psychological disease or disorder;
 - ii. a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; or
- e. malformation or disfigurement of a part of the body—
and includes a disability that may exist in the future (including because of a genetic predisposition to that disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability.

70 Victorian Equal Opportunity and Human Rights Commission, *Held Back: The experience of students with disabilities in Victorian schools*, September 2012, page 95.

71 Part 4 section 38(1)(2) *Equal Opportunity Act 2010*.

Students with a disability or mental illness

207. The department advised the investigation that it is estimated that 15 per cent of students, approximately 84,000, are 'identified as learners with disabilities who require some level of reasonable adjustment'⁷².
208. However, not all students with a disability receive the supplementary PSD funding. This may be because the disability has not been identified or diagnosed or the PSD funding application has not been approved or has not yet been made. All Victorian students, including the estimated 15 per cent of students with disabilities who are in need of a reasonable educational adjustment to participate in schooling, are supported with government funding under the Student Resource Package.
209. In recognition of the need for additional support for some Victorian students with disabilities with high needs (just over four per cent of students), supplementary resources are provided to schools via PSD funding.
210. While 84,000 students are 'identified as learners with disabilities', just over 24,000 receive additional targeted funding - approximately four per cent of students.
211. Mental illness was another notable theme in the Expulsion Reports reviewed for the investigation. Some recorded that the school suspected the child had a mental illness or that the child was seeing a mental health professional away from the school. These students may receive PSD funding under the category of Severe Behaviour Disorder.
212. It was difficult to determine the extent to which students with a disability or mental illness are being expelled, owing to the limited evidence available to the investigation. The investigation's analysis is based on the Expulsion Reports and therefore dependent on how diligent schools were in recording on the reports whether the child had a disability or mental illness and whether they received PSD funding.
213. On the Expulsion Reports, mental illnesses and disability are recorded in the same section. However, the investigation's analysis demonstrates that, at a minimum, of the 278 expulsions, 93 were for students with a disability or mental illness - over 31 per cent.
214. Further, the analysis revealed of the 278 expulsions in 2016, at least 46 of the students were in receipt of PSD funding. This means that despite students who receive PSD funding being around four per cent of the student population, they represented over 16 per cent of expulsions.
215. The challenges faced by these students and their families can be profound. The following two case studies demonstrate these challenges, but also reveal that positive outcomes can be achieved if students with disabilities and mental illness are well supported.

⁷² Letter from Department of Education and Training to Victorian Ombudsman, 21 January 2017.



Case Study 1

Daniel's parents contacted the Ombudsman after the investigation was announced and were interviewed about their experience. Daniel, who has Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Oppositional Defiance Disorder, anxiety and depression, was expelled when he was seven years old and in grade 2. The expulsion occurred at the third primary school he had attended since prep.

Daniel had attended the school since the third term of grade 1 and was receiving level 2 PSD funding for severe behaviour, used by the school to provide ten hours with a teacher's aide per week. The aide was another parent from the school.

Daniel's parents said that he had a good year in grade 1, but in grade 2 his behaviour deteriorated. Daniel was becoming anxious and would, for example, hit his head against the walls when it was time to go to school. He was also undergoing a change in medication.

By term two Daniel's parents said they were so regularly called by the school to pick him up that his father took time off work and kept Daniel home for the rest of the term. Daniel returned in term three. Early that term, Daniel was suspended for 'trashing the class room'. During the suspension, the principal scheduled a behaviour review conference and the Notice of Expulsion notes Daniel was expelled for 'consistently behaving in an unproductive manner that interferes with the wellbeing, safety or educational opportunities of any other student'.

Daniel's parents said that the school told them Daniel had not hurt other students during his melt downs. His father said:

He was expelled for consistently behaving in an unproductive manner. But he was diagnosed with severe behaviour disorder so he was basically expelled for his condition.

Daniel's parents were dissatisfied with the expulsion process and lodged an appeal. Their appeal included claims that the principal failed to follow the Ministerial Order, the grounds of expulsion were unfair and that Daniel had been discriminated against because of his disability. They were unsuccessful in their appeal.

Daniel has since moved to a new government school. His parents stated that the school is able to manage Daniel's behaviour better by communicating with Daniel's parents and his professional support team. They said the new school has a more positive approach to Daniel.

For example, the school has implemented a rewards system. When Daniel reaches his reward by behaving appropriately, the whole class shares the reward with Daniel. Daniel's favourite reward is being allowed to go to another classroom to read to another child with Down Syndrome.

Daniel has not been suspended or had any serious disciplinary action since he changed schools. Daniel's father has been able to return to work full-time, and said of his son:

[He's] just totally different, just really happy. Happier at home, just a totally different kid. Like in 12 months he's just totally different'.

When asked about a change they would like regarding expulsions, Daniel's father said:

Take out the loophole where this [expulsion] can be used as a tactic or a ploy to remove children who require extra supports and schools that aren't prepared to get those supports, opt to just move these kids on. Thinking that's the easy option for their staff and their students not realising the long term damage that does to that child. Especially children of that age who don't even understand why one minute they're in their school, the next minute they can't see their friends.



Case Study 2

Mitchell's mother contacted the Ombudsman and was interviewed about his expulsion from a primary school. As a young infant, Mitchell experienced early trauma due to family violence. He has been diagnosed with Post Traumatic Stress Disorder, anxiety, sensory processing difficulties, suspected Auditory Processing Disorder, Attention Deficit Hyperactivity Disorder, Oppositional Defiance Disorder and Autism Spectrum Disorder. He receives PSD funding.

When Mitchell started prep in a Catholic school he started to exhibit difficult behaviour. He transferred to a government primary school at the start of grade 2. After a 'meltdown' in grade 4, Mitchell's mother stated that the school wanted to expel Mitchell and placed him on an indefinite suspension. Mitchell's mother sought intervention from the department and he was transferred to another government school.

Mitchell was expelled from this school in grade 5 after an altercation with other students. School staff attempted to intervene and according to the Expulsion Report, Mitchell failed to follow instructions and acted in a disrespectful manner towards staff. Mitchell swore at, bit, kicked and scratched staff. The Expulsion Report notes twice that Mitchell was in 'a heightened state'.

Mitchell's mother said that the school staff did not follow the crisis management plan that had been developed for Mitchell by a Department of Health and Human Services psychologist. She said that at the behaviour review conference, she and the psychologist argued that expulsion was premature:

Myself and the psychologist from DH[H] S said 'no there's still lots and lots that can be done...and you're expecting a child that's in an escalated situation and has an autism diagnosis to follow reasonable instruction while that situation is going on.'

And because he didn't follow reasonable instruction during that situation they decided to expel him. My argument at the time was, what is reasonable instruction to a child with autism in a heightened state? What does that look like and what should that be? And they couldn't answer that.

Despite believing that expulsion was premature, Mitchell's mother decided not to appeal.

The Ombudsman interviewed a departmental officer who assisted in finding a new government school for Mitchell to attend. The officer said that Mitchell's new school was 'working a treat'. She also stated:

It's that lack of willingness to say this is a child with high levels of anxiety, ASD [Autism Spectrum Disorder] and trauma, how should we respond to him...it's that classic ASD stuff, he gets agitated when he's in assemblies. Why put him in assemblies? He gets agitated in the yard. Put some things in place that allow him to go into the yard but come back and be safe.

The officer said that, in part, Mitchell's placement at his new school is working well because the department was involved in setting up the enrolment and putting a plan in place.

Mitchell's mother also said that the new school was accommodating and supportive and that Mitchell has never been happier.

Students in out of home care

216. Out of home care is defined in the *Children, Youth and Families Act 2005* as 'care of a child by a person other than a parent of the child'⁷³. Arrangements can include living with a foster carer, in a kinship arrangement with a relative or family friend, or in residential care. The living arrangements of a young person in out of home care are often, but not always, subject to a court order.
217. The investigation's review of the Expulsion Files determined that at least 15 students living in out of home care were expelled from Victorian government schools in 2016. Of these students:
- 13 were boys
 - 2 were Aboriginal and Torres Strait Islanders
 - 9 had a disability or mental illness
 - 11 had a specific educational need
 - 5 were receiving PSD funding from the department.
218. Under the Ministerial Order principals must 'inform the Regional Director that expulsion of the student is being considered'⁷⁴. The investigation found that this requirement was met in the cases where students in out of home care were expelled in 2016.
219. The most recent figures from the Australian Institute of Family Studies show that there were 8,567 children in out of home care in Victoria in 2014-15. Not all of these children will be of compulsory school age and some may be in the non-government school sector; however, even without allowing for these factors this number still represents less than two per cent of the student population in government schools.

220. With that in mind it is worth noting that children in out of home care accounted for slightly over five per cent of expulsions in 2016. Not all Expulsion Reports recorded if the child was in out of home care so it is possible that percentage could be higher.

221. The difficulties faced by students in out of home care in their education is acknowledged to the extent that there exists a partnering agreement between the Department of Health and Human Services, Department of Education and Training, the Catholic Education Commission of Victoria and Independent Schools Victoria.

222. Established in 2003 the agreement contains guidelines for Victorian Schools, community service organisations and Child Protection about their shared responsibility for supporting the education of young people in out of home-care.

223. The agreement notes:

Children and young people in out of home care are at greater risk of disengagement because their life circumstances, history of trauma, disrupted schooling, learning experiences and/or behaviours impact on their learning and school participation. They require particular attention and support to overcome these barriers and achieve positive educational outcomes.

...

Abuse and neglect impact on academic performance in various ways, including reduced cognitive capacity, sleep disturbance, memory difficulties and language delays. There are also impacts on social functioning, including the need for control, attachment difficulties (including attachment to school), poor peer relationships and instability arising from frequent moving⁷⁵.

73 Section 3 *Children, Youth and Families Act 2005*. Out of Home Care is also defined in clause 3, *Ministerial Order No. 625*.

74 *Ministerial Order No. 625 - Procedures for Suspension and Expulsion*, Clause 11(2).

75 *Out of Home Care Education: Commitment A partnering Agreement between the Department of Human Services, Department of Education and Early Childhood Development, Catholic Education Commission of Victoria, Independent Schools Victoria*, August 2011, page 4.

224. In an effort to offset these disadvantages the agreement aims to ensure that:

- processes are in place to actively support the educational achievement of every child and young person in out of home care
- a strongly coordinated approach exists to support the needs of children and young people in out of home care
- all parties understand each other's roles and responsibilities and work cooperatively
- strategies are implemented to improve outcomes related to student enrolment, attendance, achievement, case planning, retention and school completion⁷⁶.

225. The Expulsion Reports did not have enough information to allow the investigation to assess whether the agreement was being adhered to in cases where students in out of home care were expelled.

226. There appears a policy recognition of the need to further support students in out of home care with the establishment of Lookout Centres. Established as part of the Education State initiative, this program seeks to support the educational outcomes of young people in out of home care. Each Centre is led by a principal and staffed by a team with expertise in mental health, education and Koori Cultural Awareness. These teams work with a designated teacher within a school to help schools and Child Protection workers improve their compliance under the agreement.

Trauma

227. Students who have experienced childhood trauma were identified as being vulnerable to expulsion by a range of people who contributed to the investigation. The issue was raised in 14 meetings with community organisations, in six submissions, and during six interviews.

228. For example, the Mallee Accommodation Support Program (MASP), a service organisation funded by the Department of Health and Human Services to work with Child Protection clients, wrote in its submission:

Young people in care have experienced significant trauma thus presenting in some cases challenging behaviours. Schools simply do not have the resources to use other interventions other than suspension or exclusion to manage these behaviours⁷⁷.

229. Childhood trauma is said to be caused by 'a psychologically distressing event that is outside the range of normal childhood experience and involves a sense of intense fear, terror and helplessness'⁷⁸. It includes events that can overwhelm a person's ability to cope, including experiencing a natural disaster, a car accident, assault or various types of abuse suffered in childhood⁷⁹.

⁷⁶ *Out of Home Care Education: Commitment A partnering Agreement between the Department of Human Services, Department of Education and Early Childhood Development, Catholic Education Commission of Victoria, Independent Schools Victoria*, August 2011, page 5.

⁷⁷ Submission from MASP, 20 March 2017, page 3.

⁷⁸ Perry, B. Stress, Trauma and Post- traumatic stress disorders in children, Child Trauma Academy, Houston, TX. 2007, page 15.

⁷⁹ <http://www.istss.org/public-resources/remembering-childhood-trauma/what-is-childhood-trauma.aspx> accessed on 13 April 2017.

230. Dr Bruce D Perry, a clinician and researcher in children’s mental health and neuroscience describes the effect of childhood trauma:

Chaos, threat, traumatic stress, abuse and neglect are bad for children. These adverse experiences alter a developing child’s brain in ways that result in enduring emotional, behavioural, cognitive, social, and physical problems...simply stated, traumatic and neglectful experiences during childhood cause abnormal organization and function of important neural systems in the brain, compromising the functional capacities mediated by these systems⁸⁰.

231. Department of Health and Human Services’ guidance on childhood trauma explains that prolonged exposure to trauma can lead to ‘toxic stress’, which, in addition to affecting brain development, ‘impairs the child’s ability to trust and relate to others. When children are traumatised, they find it very hard to regulate behaviour and soothe or calm themselves’⁸¹.

232. Common behaviours in the school setting that can indicate trauma are set out in Table 3 below.

Table 3: Indicators of trauma

Primary school students	Secondary school students
Anxiety, fear, and worry about safety of self and others	Decreased attention and/or concentration and irritability with friends, teachers or events
Increased distress	Angry outbursts and/or aggression
A change in the ability to interpret and respond appropriately to social clues	Increase in impulsivity, risk-taking behaviour
Changes in school performance	Negative impact on issues of trust and perceptions of others
Difficulty with authority, redirection or criticism	Over or under reacting to bells, physical contact, doors slamming, sirens, lighting, sudden movements
Hyperarousal (e.g. sleep disturbance, tendency to be easily startled)	Absenteeism

Source: The National Child Traumatic Stress Network

80 Perry, B. D. *Applying Principles of Neurodevelopment to Clinical Work with Maltreated and Traumatized Children: The neurosequential model of therapeutics* cited in: *Working with Traumatized Youth in Child Welfare*. Boyd-Web, N. (Ed.) (2006). The Guilford Press page 29.

81 http://www.dhs.vic.gov.au/__data/assets/pdf_file/0006/586167/child-development-and-trauma-guide-1_intro.pdf accessed on 13 April 2017 pages 2-3.

Indicators of trauma in the review of 2016 expulsion files

233. In 2016 Victorian government schools identified in 15 Expulsions Reports expelled students who were affected by trauma. For example, schools observed that:

[student] has experienced violence and trauma at an early age, as well as the separation of the family unit which has impacted significantly on his ability to process some of his behaviour.

it would be helpful if the region had a team of professionals that could help schools intervene in cases like this, where it is clear a band of professionals needed to surround a traumatised student. We have tried and failed to engage [student].

Analysis by a clinical psychologist

234. While only 15 of the 278 Expulsion Reports specifically identified that the student had been affected by trauma, the prevalence of trauma among students expelled from school was noted by several witnesses.

235. The investigation engaged a clinical psychologist, Ms Katrina Streatfeild, to review a sample of Expulsion Reports for indications that the students expelled had experienced childhood trauma. Ms Streatfeild was provided with a random de-identified sample consisting of 60 expulsion reports, 15 from each region.

236. For the purposes of her review Ms Streatfeild defined childhood trauma as:

Childhood trauma is defined as exposure to significant adverse childhood experiences including significantly disrupted early attachments, abuse, neglect, or other trauma; that these experiences have occurred at key developmental stages significantly impacting the neurosequential development of the brain, especially that occurring in the first 3 to 5 years, and that the child, as a consequence, presents an indicative profile of social, relational, emotional, behavioural and cognitive dysfunction.

237. The data from the Expulsion Reports was then compared to a set of exposure criteria defined under the following four categories:

- **Exposure**

- early (in the first 3 to 5 years) disrupted or multiple placement history and/or inconsistent primary attachments
- exposure to abuse, neglect or other trauma (especially in the first 3 to 5 years)
- history of involvement with Child Protection (substantiated trauma).

- **Relational and Social**

- persistent pattern of indiscriminate, avoidant, or, unpredictable relationships with staff and/or students
- persistent pattern of over compliance or defiance in relationships with staff and/or students
- difficulties establishing rapport and trust
- impaired capacity for empathy, social prediction and interpersonal problem solving
- difficulties in making and/or sustaining appropriate peer relationships
- appears controlling.

- **Emotional and Behavioural**

- persistent pattern of emotional and/or behavioural dysregulation (hyperarousal or dissociation) in response to even minor cues of potential threat (based on experience of trauma) as a function of rage, shame, helplessness, fear etc.
- regressive or immature capacity to identify and reflect on one's own emotional experiences, self soothe or use/accept other's assistance to achieve emotional safety and containment.

- **Cognitive**

- attention and concentration difficulties with poor memory
- language difficulties - expressive and receptive
- impaired learning capacity⁸².

238. Ms Streatfeild's review found that of the 60 Expulsion Reports, 53 had at least one indicator of trauma with several having more than one indicator present. Her findings are set out in Table 4 below.

Table 4: Trauma review data

Region	Exposure	Social Relational	Emotional/ Behavioural	Cognitive
North East Region	5	14	13	8
North West Region	3	9	12	5
South East Region	1	14	13	4
South West Region	3	8	7	6
Total	12	45	45	23

⁸² Downey, L. (2007). Calmer Classrooms: A guide to working with traumatised children, Child Safety Commissioner, Melbourne, page i.

239. Ms Streatfeild's summary states:

Whilst in most cases, there was insufficient information to determine exposure to early attachment disruption in the Expulsion Reports, a significant number of cases met all other criteria.

...

Further investigation of the occurrence of childhood trauma in this population appears to be indicated by the number of cases meeting social/relational, emotional/behavioural and cognitive criteria⁸³.

Submissions and case studies

240. The investigation received a submission from Knightlamp a service organisation that provides consultancy to out of home care settings, schools and other organisations for people living with childhood trauma⁸⁴.

241. In its submission Knightlamp observed:

Children who display challenging behaviours arising from complex trauma who may or may not be clients of Child Protection services, do not have their educational needs responded to well and, for the very reasons of the impacts of abuse and neglect are not effectively catered for in the Victorian education system⁸⁵

242. Despite state-wide training of schools in trauma principles, Knightlamp states that student's 'trauma-driven presentation commonly leads to their exclusion from mainstream education' and alternative settings also do not use trauma informed approaches 'suitable and sufficient to the task of healing trauma'⁸⁶. Knightlamp stated:

These children experience a disability no less acute or impactful than other types of disability, but are offered a response which is not well tailored to meet their need. In effect, this could be viewed in the same light as a school setting not providing ramps to facilitate wheelchair access⁸⁷.

243. Knightlamp provided the two cases studies on the following page describing students it had been involved with who suffered from trauma and were expelled because of their behaviour.

83 Katrina Streatfeild BA(SocSci)(Hons) MPsych(Coun) MCCLP, Brief Data Review: Childhood Trauma in Victorian School Expulsions. Completed on behalf of the Victorian Ombudsman.

84 Knightlamp Submission to Victorian Ombudsman, *Ombudsman Investigation into Expulsions from Victorian Government Schools*, February 2017 page 2.

85 *ibid.*

86 *ibid.*, page 3.

87 *ibid.*, page 3.



Case Study 3

Knightlamp was engaged by a child welfare organisation to provide services to a school to support Duncan, an early primary school Aboriginal student who was running away from school and exhibiting other disruptive behaviour on a daily basis. Duncan had been in out of home care previously.

Knightlamp provided Duncan a Therapeutic Classroom Worker (TCW) to work with him at all times when he was at school and when he could not attend. The TCW worked with Duncan to develop his capacity for emotional regulation and also provided training to teaching staff.

The TCW observed that some staff appeared to 'tolerate' being trained in trauma-informed thinking while continuing to try to find evidence to justify expelling Duncan. Despite clear improvement in his capacity to manage being at school, Knightlamp said school staff continued to present evidence that seemed at times comparatively petty to show Duncan's lack of suitability for the school.

This led to a series of suspensions and an expulsion. For a while after he was expelled, Duncan's mother home schooled him as she faced difficulties finding a new school because she did not drive. A child welfare organisation assisted the family to relocate and Duncan was enrolled in a school.

Initially the child welfare organisation provided input to the school but declined to pay for further sessions with Knightlamp because of financial constraints. Knightlamp has learned that Duncan, unable to manage his presentation at school, has been expelled again. Duncan is still of primary school age and was not attending school when Knightlamp made its submission.



Case Study 4

Jessica, a primary school student with a history of assessed developmental trauma was expelled from school for aggressive behaviour towards other students. For a time, she was home schooled by her mother. When another school accepted her enrolment Knightlamp was engaged to support Jessica and the school. This took the form of support for staff including coaching for the main teacher and the provision of a therapeutic care worker to work with Jessica from before she started at the school.

Knightlamp said that when she started at the school, Jessica could only tolerate a severely reduced timetable of two hours twice a week. After two terms Jessica had not displayed any violence and had increased her attendance to three full days per week.

Knightlamp learned that Jessica's father, who was understood to be a significant source of trauma, was soon to become more involved in her life. Knightlamp advised the school that Jessica's behaviour would be likely to deteriorate when this happened, but with continued support this regression could be temporary.

Soon after her father's return to her life Jessica experienced a period of hyperarousal that led to her hitting another child. While the school was supportive of Jessica and Knightlamp, and understood the significance of her therapeutic and educational progress, the principal advised Knightlamp that due to community pressure they had no choice but to expel Jessica. Knightlamp believes that any attempt to engage Jessica in other schools has been unsuccessful.

244. In its response to the Ombudsman's draft report the department included details of the following programs available in the education system:

- DET's School-Wide Positive Behaviour Support (SWPBS) program is an evidence-based framework for preventing and responding to challenging student behaviour. It aims to create a positive school climate, a culture of student competence and an open, responsive management system for all school community members. It includes analysis of data in professional learning teams, implementation of evidence based practices and organisational systems for establishing safe, purposeful and inclusive school and classroom learning environments while providing the individual behaviour and learning supports needed to achieve academic and social success for all students. DET has training and resources available to all schools who wish to implement SWPBS.
- Student Welfare Coordinator and Wellbeing team – secondary schools have health and wellbeing teams and Student Wellbeing Coordinators (SWC) provide direct support to students as issues arise.
- Student Support Groups – This group may comprise a multidisciplinary team of professionals from the school, local student support services, school nursing and community based health services (if engaged) who will work to ensure that services being provided to the student are appropriate and coordinated. The student and their parents also participate in this group.
- Behaviour Support Plan – The Student Support Group can develop a plan that will outline the supports that will be provided to the student. Supports could include one on one counselling from a psychologist or social worker with specialist expertise, activities to build resilience, social skills or other support where appropriate.
- Student Support Services (SSS) – the SWC can refer a student to SSS to obtain additional support from a psychologist or social worker via the Student Online Case System. The local SSS Coordinator will then allocate a psychologist and/or social worker to support the student based on an assessment of their needs. The support provided could range from direct counselling to working with the student's teachers or Student Support Group to make appropriate educational adjustments to support his/her wellbeing while at school.
- School Nursing – similar to SSS, DET's Secondary School Nursing Program provides free individual counselling, referral and support to students in government secondary schools.
- SAFEMinds is an online and face-to-face professional learning and resource package for schools and families that aims to:
 - enhance early intervention mental health support for children and young people in schools, specifically regarding mild mood disorders (anxiety and depression) and self-harm
 - increase engagement of parents and carers with schools
 - develop clear and effective referral pathways between schools and community youth and mental health services.

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- DET's Building Resilience Framework - recognises that many young people, even those who appear to possess good coping skills, are faced with challenges that may seem overwhelming. Resilience education is an integral prevention component for all children and young people, whether they are at risk or not. The Building Resilience Framework provides an evidence-based approach to assist schools undertake a consistent and developmentally appropriate application of the science of resilience building in their students. Schools are able to access programs, tools and resources to enhance resilience via an online portal.
 - Resilience, Rights and Respectful Relationships learning resources - equipping children and young adults with the skills to understand and critique gender norms, the benefits of positive relationships, and how to communicate positively and respectfully is essential preparation for productive and healthy adult lives.
 - The Bully Stoppers online toolkit has been developed and made available to all schools to establish a common understanding of bullying for Victorian schools and their communities with support, clear guidance and practical tools to effectively prevent and respond to bullying.

Source: Department Education and Training
Response to Ombudsman's Draft Report

A human rights perspective

245. Actions and decisions relating to expulsions in Victorian government schools can raise human rights issues under the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). Section 38 of the Charter provides that it is unlawful for a public authority (including government schools) to act incompatibly with a human right contained in the Charter or, in making a decision, to fail to give proper consideration to a relevant human right.
246. Section 17(2) is one of a few provisions in the Charter to recognise that children are entitled to special protection by virtue of their status as children. It provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.
247. Central to this right, although not defined in the Charter, is ‘the best interests of the child’. Guidance can be drawn from the ‘best interests principles’ in section 10 of the *Children, Youth and Families Act 2005* (which expressly includes access to education) and the *United Nations Convention on the Rights of the Child* (the Convention)⁸⁸.
248. The Convention was adopted in 1989 and ratified by Australia in December 1990. It makes the best interests of the child ‘a primary consideration’ in actions and decisions concerning children and, like the Charter, defines ‘child’ as a person under 18 years of age.
249. Several articles in the Convention are particularly relevant to the decision to expel or exclude a child from a government school, including Article 12 that states children have the right to say what they think should happen when adults are making decisions that affect them, and to have their opinions taken into account. According to Justice Bell in *Secretary to the Department of Human Services v Sanding*:
- It is unquestionably important for the voice of a child to be heard in matters affecting them. As I have said, children bear rights personally, and are entitled to respect of their individual human dignity.⁸⁹
250. Articles 28 and 29 of the Convention expressly deal with education and the requirement that it be free and compulsory for all children and aim to develop a child’s personality, talents and mental and physical abilities to the fullest extent. Article 28 also requires that school discipline be administered in a way that respects children’s human dignity and other rights in the Convention.
251. In expulsion cases involving students with additional needs, like Daniel and Mitchell in case studies 1 and 2, the right to recognition and equality before the law under section 8 of the Charter is also relevant. Section 8 provides that every person is entitled to the equal protection of the law without discrimination, and has the right to equal and effective protection against discrimination. This right protects against discrimination on the basis of a condition or disorder that results in a person learning more slowly and behaviour that is a symptom or manifestation of a disability.⁹⁰

⁸⁸ See *Charter of Human Rights and Responsibilities Act 2006*, section 32(2) and *ZZ v Secretary, Department of Justice & Anor* [2013] VSC 267 (22 May 2013).

⁸⁹ *Secretary to the Department of Human Services v Sanding* [2011] VSC 42 (22 February 2011) at [209].

⁹⁰ See *Charter of Human Rights and Responsibilities Act 2006*, section 3 and *Equal Opportunity Act 2010*, sections 4 and 6.

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252. In addition to the Charter, Article 23 of the Convention provides that children with disabilities must have effective access to education in a manner conducive to achieving the fullest possible social integration and individual development.
253. The rights of children like Daniel and Mitchell under the Charter are not absolute and may be limited or balanced with other rights. This ensures that in protecting one human right, another right or the public interest is not unreasonably affected. Limitations on rights, however, must have a clear basis and must be reasonable and necessary in the circumstances.
254. A decision to expel or exclude a child from a state school that does not give proper consideration to the child's rights under sections 8 and 17(2) may be unlawful. In making such a decision, the school should ask whether there is another reasonable way forward that is less restrictive on the child's human rights.
255. The Ministerial Order and the Expulsion Report template do not refer to the need to consider the Charter when deciding to expel a student. However, the department's *Student Engagement and Inclusion Guidance: Expulsion Considerations* provides:
- Under Victorian Law, in deciding whether to expel a student, principals must undertake an assessment of that course of action under the *Charter of Human Rights and Responsibilities Act 2006*.

After expulsion

Continuing education, training or employment options

256. One of the primary concerns identified in complaints to the Ombudsman regarding expulsions was the difficulty some children and their families had in finding another school.

257. Under the Ministerial Order when a student is expelled:

The principal of the expelling school, in collaboration with the [department] regional office, must ensure that the student is provided with other educational and development opportunities as soon as practicable after the expulsion⁹¹.

258. The Ministerial Order specifically requires that during the behaviour review conference, the principal identify 'future educational, training and/or employment options most suited to the student's needs and agree on a course of action in the event expulsion is decided'⁹².

259. The Expulsion Reports analysed for the investigation did not always reveal what arrangements were put in place to ensure that this requirement was met. While some Expulsion Reports indicated that an arrangement was made for the student to enrol in another school, others were more vague.

260. Each Expulsion Report had a section to be completed by the school titled 'Transition Plan'. Some of the reports lack any form of detail and include 'plans' such as:

[Student name] will continue to be supported with her learning until she commences at her new school.

School will continue to work with the family to secure an appropriate educational setting that will meet his needs.

The College will meet with [student] in the first week back to support [student] in finding an appropriate pathway.

261. The department does not routinely keep a record or any data on whether principals and regional offices are meeting the requirement to ensure that the student is provided with other educational and development opportunities. The investigation asked the department to provide advice on the 'educational and development opportunity' arranged for the 278 students expelled in 2016 and how long after their expulsion this occurred.

262. In response the department compiled and provided the investigation with the outcomes for 277 expulsions which occurred in 2016⁹³. It should be noted that, despite the requirements of the Ministerial Order this information is not usually collected by the department and was provided for the purpose of the investigation.

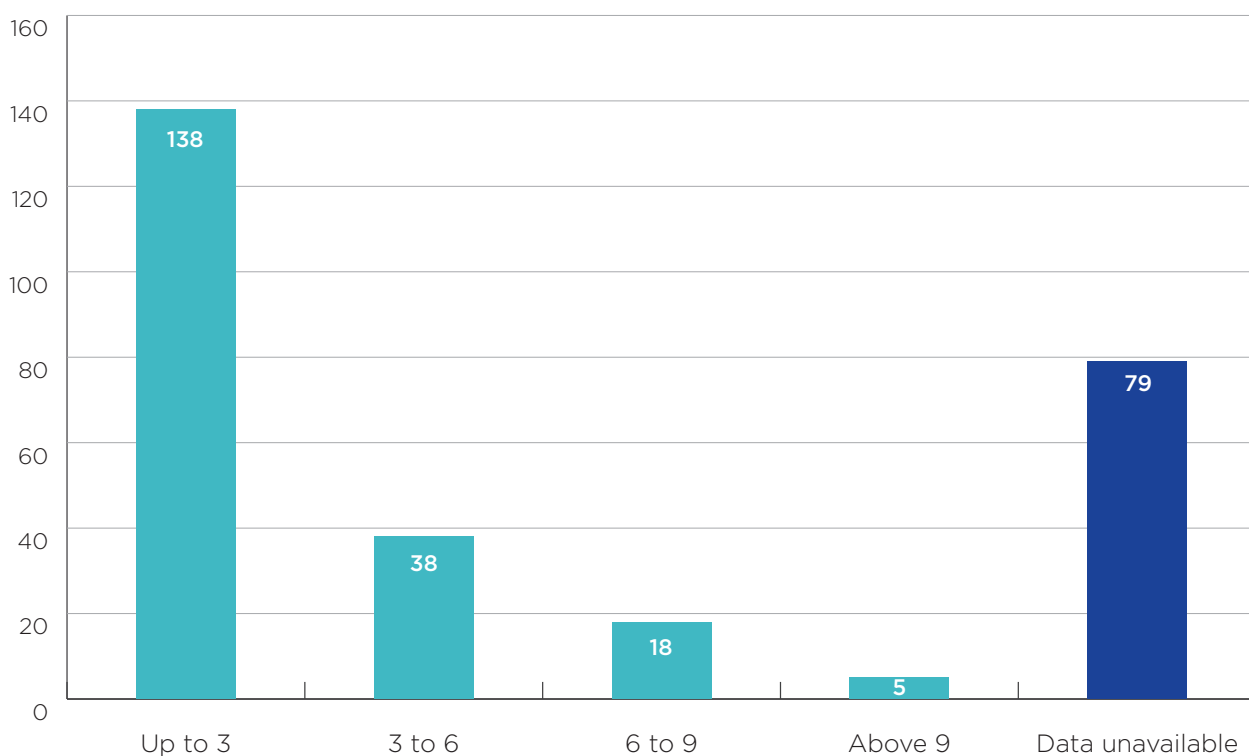
91 See *Charter of Human Rights and Responsibilities Act 2006*, section 3 and *Equal Opportunity Act 2010*, sections 4 and 6.

92 Clause 12(1) of Ministerial Order No. 625 - Procedures for Suspension and Expulsion.

93 Due to the discrepancies in the number of students expelled in 2016, as detailed in the earlier chapter, the number of expulsions and the number of outcomes the department was able to provide differ.

263. The following graph shows how long students were out of school following an expulsion. Although the majority of students were re-enrolled at another school within three months, 61 students were out of school for over three months. For 79 of the students the days missed were not possible to calculate due to deficiencies in the data provided⁹⁴.

Graph 2: Amount of school missed after expulsion.



⁹⁴ This was most often because a) the student was above compulsory school age b) the department was unable to advise of the student's next school or equivalent organisation or c) the dates in the data provided by the department did not match with the expulsion date in the Expulsion Report.

264. The investigation identified Expulsion Reports that did not demonstrate that principals had addressed the requirement in the Ministerial Order to describe pathways for future education. The investigation noted that where there was no clearly articulated plan for the student, there was often also a significant period of disengagement. For example:

- **184 missed school days:**

A secondary school student with Post Traumatic Stress Disorder was expelled in early 2016 after admitting to smoking marijuana on school grounds. The Expulsion Report states '[another named school] is the preferred educational setting. [Expelling school] will make contact with the Principal to arrange an enrolment meeting'. The student was enrolled at a new school (different from the one suggested) in early 2017 after missing 184 days of school.

- **150 missed school days:**

A secondary school student was expelled in early 2016 for driving on school grounds with other students in the vehicle. The Expulsion Report listed three Victorian Certificate of Applied Learning (VCAL), TAFE or alternative education options and stated that a careers counselling meeting had been arranged for the family and details of course options had been provided to family as well as 'continuing contact with family to transition successfully to another location'. The student enrolled in TAFE in late 2016, 150 days after his expulsion.

- **126 missed school days:**

A secondary school student was expelled in mid-2016 as a result of a culmination of behaviour that included inappropriate language, refusing to follow instructions, stealing supplies from the art room and holding a piece of burning paper in class. The section of the Expulsion Report relating to continuing education, training or employment stated:

'school work to be provided for [the student] pending a placement at a neighbouring secondary college' and '[the school] and the regional office to broker an interview and placement at a neighbouring school in the... region'.

The student was enrolled in a new school in early 2017, after missing 126 days of school.

- **At least 115 missed school days:**

A secondary school student was expelled in mid-2016 as a result of being truant, uncooperative with teachers, intimidating to other students and involved in drug use. The Expulsion Report stated that the student and his family recently arrived from overseas and the student had been out of school for some time before arriving in Australia. The student and his parents did not attend the behaviour review conference. In early 2017 the student was enrolled in the nearest government school after missing 115 days of school.

265. The Victorian Association of State Secondary Principals' submission addressed the issue of pathways for expelled students:

Principals understand that it is their responsibility to arrange for an expelled student to enrol at another school or find an appropriate educational pathway for students. This is a responsibility taken most seriously by principals. It is a time-consuming process and one which can give rise to a number of concerns, particularly when finding a suitable placement for a student is difficult.

Difficulties arise when the school approached by the principal refuses to accept the expelled student.

While at the Behaviour Review Conference, the Principal will discuss options with the student and their parents/carers, it is understood that generally the expelled student would move to the next nearest government school. However, there are occasions when the principal of that school refuses to enrol the student and when parents do not accept enrolment in the next nearest government school. In some rural and regional areas, there is no other government school within a reasonable or practicable distance. These difficulties can be further exacerbated by government schools having to accept expulsions from nearby non-government schools.

To address and overcome some of these difficulties principals in some areas and networks enter into arrangements to ensure that they fulfil their responsibilities and 'take their turn' so that students are placed appropriately. Other examples include schools forming a placement committee to in order to share the placement of expelled students equally among the schools.

The placement of students in another educational setting or pathway is definitely a stage of the process where principals believe there should be more support and involvement from the Regional Office. At present, principals report that there is little or no support from Regional staff in this process or, when there is, the Regional staff do not have sufficient knowledge of the process or the context in which the principal has made the decision to expel. Therefore, support for principals from the Regional office would assist with principal workload and also help to ensure positive outcome for the student⁹⁵.

266. At interview a departmental employee said that schools expel without having a plan in place for the student:

A lot of the things that I've done support on have been where is this young person going to be able to go to school? And one of them, one of the criteria [to expel] is you can't expel if you can't find an educational pathway for that student. But that doesn't seem to be taken into account and there are a range of kids, I have a list of them, who haven't been able to get to another school. So we've had to say from a regional perspective, you need to take that student back because they can't get to school⁹⁶.

95 Victorian Association of State Secondary Principals submission, 7 December 2016.

96 Interview with Senior Wellbeing and Engagement Officer, Department of Education and Training, 21 December 2016.



Case study 5

Andrew's mother contacted the Ombudsman and was interviewed about her son's expulsion. Andrew was expelled from his primary school when he was 6 years old and in grade 1. Andrew has been diagnosed with trauma-based anxiety and he also experiences frequent incontinence requiring him to change his underpants up to five times a day.

In grade 1 the principal assigned several different aides to work with Andrew. Andrew's mother said that, one week, Andrew had six different aides work with him. She said that at the start of term four, he was suspended for three days. Andrew's mother said she was then called to a meeting at the school and told that he would be expelled.

Andrew's mother said it wasn't until after she was told Andrew would be expelled that the school scheduled a behaviour review conference. She said that the behaviour review conference was 'a *fait accompli*... just them going through the motions so they could give us the [expulsion] documentation.

Of the reason for his expulsion, Andrew's mother said:

I am not sure of an exact incident, it was our understanding that it was the culmination of previous incidents.

She said that he was regularly suspended for threatening behaviour towards staff.

Andrew's mother acknowledged that her son is difficult, at times requires restraint, and that he had hurt teachers, but not to the extent that required any medical attention.

Andrew's parents appealed the expulsion hoping that it would be overturned but were unsuccessful. Andrew's mother said that the expelling principal provided no assistance in finding a new school for him:

The principal to my knowledge was not doing a thing. She had completely wiped her hands of it and was, we had no engagement with her at all and no support from her at all. She said to me, 'I called [another primary school] that was all I had to do, they have to take you, it's their problem now' and she didn't do another thing the entire time.

Andrew's mother contacted between 25 to 30 schools and said she was given a range of reasons why the schools would not accept his enrolment. After eight weeks when Andrew was not in school, he secured an enrolment at a school over 20 kilometres from home.

Andrew's mother reflected:

[Andrew] is lucky, he's got us in his corner but other kids don't have that and where do they end up? Where are those kids? I know where they are, they're not at school, they slip through the cracks, they end up in the justice system

267. For students in rural or regional areas such issues can be exacerbated because fewer schools or training organisations are available. At interview, a departmental officer based in regional Victoria gave an account of a recent example of a student who had been expelled from the only school in their town:

I said 'how is he [the student] going to get to [town B]...there's no bus from [town A] to [town B]?' and she [the parent] couldn't drive him, which she shouldn't have to anyway that distance. But they [the expelling school] saw that as a pathway. And then they said, the principal said to me 'well he can get on the V/Line bus'. And I went 'well he will have missed the start of the school day and then he has to catch the bus... at 2 o'clock to come back'.

That's not an educational pathway, that's nothing, that's him being at school for about three hours a day and this was already a disadvantaged kid who had an intellectual disability who was funded under the program for students with a disability... But I had to keep pushing with that and so in the end I had to say, with the backing of my area director, 'he needs to be re-enrolled with your school because there's no other educational pathway for him so you shouldn't have expelled him in the first place because you couldn't find that [pathway]'⁹⁷.

268. For some students the resultant educational pathway does not appear satisfactory but is the only one available due to where they live. The following case study is an example of this.



Case Study 6

Dane's mother contacted the investigation to provide her account of his expulsion from school as a 13 year old with Autism Spectrum Disorder. Dane was born premature and had a number of medical conditions in addition to autism.

In terms one and two of year 8, Dane was suspended a number of times. Dane's mother said that on the last day of his final five day suspension, the school contacted her and said 'he can't come back we're having an expulsion meeting'. Upon hearing this, Dane emotionally deteriorated to the point of being hospitalised. The behaviour review conference was held while Dane was in hospital and neither he nor his mother attended.

In terms of educational pathways, Dane's mother said he was offered alternative education placements in two towns. Both towns are approximately 70 kilometres from Dane's home; and because his mother is a single working mother with two other children, Dane would have to travel on public transport every day to attend school. Dane's mother explained that this was not feasible because of his disabilities:

It is to do with the autism because what it is, he's got all sensory issues so lighting, noise, touch the whole lot. The thing is it might work 90 per cent of the time but the time it doesn't work he becomes so illogical he's actually unsafe.

Dane's Expulsion Report indicates that the school also considered 'enrolment in the Distance Education Centre of Victoria or enrolment at another school'. In the end, Dane's expelling school arranged for his enrolment at the local Catholic school for six hours a week. Dane's mother was reluctant to accept this enrolment because, 'he can't do six hours of schooling you know he's an academic-type child how's he going to do his VCE?' but felt that she had no choice. At the time of writing, Dane's mother had arranged a new enrolment for Dane.

⁹⁷ Interview with Senior Wellbeing and Engagement Officer, Department of Education and Training, 21 December 2016.

Appeals

269. Any student who is expelled from a government school can elect to appeal the expulsion. To do so they must submit the appeal to the principal within 10 school days of having received the Notice of Expulsion⁹⁸.

270. The principal then provides the Secretary of the department or their delegate with the appeal. In most cases the Secretary's role in appeals is delegated to the regional office.

271. Following this, an Expulsion Review Panel may be appointed by the department, which must include a departmental representative, a RASP selected by the Regional Director and a RASP selected by the principal.

272. The panel reviews the Notice of Expulsion, Expulsion Report and Expulsion Appeal and convenes a meeting to give the student and/or their family an opportunity to be heard. The panel then prepares a report for the Secretary or their delegate recommending that the decision to expel be upheld or overturned.

273. The power to uphold or overturn the expulsion sits with the Secretary of the department or their delegate, most times the Regional Director or the Area Executive Director.

274. Expulsions can be appealed on one or more of four grounds. The grounds, and the number of times each ground was cited in 2016 appeals, are as follows:

- the expulsion process was not followed by the principal: 8
- the grounds on which the student was expelled are unfair: 16
- there have not been sufficient prior interventions and strategies utilised prior to the decision to expel where the student has a history of behavioural issues: 18
- other extenuating circumstances: 19⁹⁹.

275. In 2016 there were 22 expulsions appealed with eight overturned. Although the numbers are small it still represents 36 per cent of expulsions being overturned on appeal.

276. A Regional Director interviewed said that 44 per cent of appeals in her region resulted in expulsions being overturned. The Regional Director said:

That's saying something isn't it? If 44 per cent are upheld on process then either the processes are not well understood or they're understood but they're being, well, ignored is the strong word. Not carried out correctly¹⁰⁰.

98 *Ministerial Order No. 625 – Procedures for Suspension and Expulsion*, Clause 13(3).

99 *Ministerial Order No. 625 – Procedures for Suspension and Expulsion*, Clause 13(2).

100 Interview Regional Director, Department of Education and Training, 21 March 2017.

Successful appeals

277. The Expulsion Review Panel Reports for the eight 2016 appeals that resulted in an overturned decision revealed the following reasons for these decisions.

Table 5: Grounds for overturned expulsion decisions

	Expulsion process was not followed	Grounds on which the expulsion occurred were unfair	Insufficient prior interventions and strategies used prior to the decision to expel	Existence of other extenuating circumstances that should have been taken into account
Appeal 1				
Appeal 2				
Appeal 3				
Appeal 4				
Appeal 5				
Appeal 6*				
Appeal 7**				
Appeal 8***				

278. In five of the eight appeals that resulted in the overturning of an expulsion, the decision was based on a failure to follow the expulsion process required by the Ministerial Order. For example, some Expulsion Review Panels recommended overturning expulsions when:

There was insufficient evidence to support that the Ministerial Order 625 [was complied with]. The BRC [behaviour review conference] MUST cover the following: any modifications or adjustments that would need to be made to enable the student to remain at the school.

There was no evidence presented in the documentation that the student's options for future education were discussed. The Notice of Expulsion stated 'enrolment [at other school] or alternate program to be discussed.

* The Expulsion Review Panel recommended upholding the expulsion but the Area Director overturned it. The information provided to the investigation did not contain the reason for this decision.

** The Expulsion Review Panel found that the expulsion process had not been followed, but could not agree about whether the expulsion should be overturned. The Area Director determined that the expulsion should be overturned, the information provided to the investigation did not contain the reason for this decision.

*** The Expulsion Review Panel did not agree about whether there were prior interventions prior to the decision to expel. The Area Director determined that the expulsion should be overturned, the information provided to the investigation did not contain the reason for this decision.

279. Expulsion Review Panels also recommended the reversal of expulsions when schools could not demonstrate that they had acted fairly in expelling the student. For example, one Expulsion Panel pointed out that:

On the evidence presented by the [school] the Panel concludes that it was difficult to understand the decision making process leadership had gone through to come to the conclusion that [the student's] behaviour was of such magnitude that expulsion was the only mechanism available to them and that there were not alternative measures that could have been taken to address the behaviour.

280. One expulsion was overturned because in implementing strategies to support the student, the school had inadequately dealt with the needs of the student as an Aboriginal and Torres Strait Islander. The Panel wrote:

...the school provided support from school counsellor, arranged for referrals to external agencies which were declined by the family, adopted a restorative practice approach to behaviour management and liaised with Child Protection and Child First. [The parent/guardian] acknowledged that the school had made adjustments to support [the student]. The panel identified that there was not sufficient evidence of strategies in place to support [the student] as a Koorie student.

281. When it considered extenuating circumstances, the Panel found that:

The panel acknowledges that the school was aware of and had taken into account that [the student] had recently moved to the area from the western suburbs of Melbourne and is a year 7 student. There is insufficient evidence that [the student's] status as a Koorie student was sufficiently taken into account in responding to his educational needs and the preparation for the [Behaviour] Review Conference in this instance.

282. The lack of strategies and interventions before deciding to expel and the lack of consideration of extenuating circumstances convinced another Expulsion Review Panel to recommend an expulsion be overturned. The Panel wrote:

... the family raised that [the student] is still adapting to [the school]. Having been in three schools in his secondary career, repeating a year and reportedly having been overseas for... months last year [the student] is at risk of not completing his education. On the evidence presented the Panel suggests he could have been more comprehensively supported over this transition period into the new school setting.

283. The following case study is an example of an expulsion that was overturned on appeal.



Case Study 7

Chris was a secondary school student who had been attending a new secondary school for three weeks when he was expelled for allegedly bringing marijuana to school and smoking it.

The Expulsion Report records that Chris was not seen with the marijuana or smoking it and none was found in his possession or in his locker. The Expulsion Report records that in terms of other disciplinary issues, Chris had received four detentions for 'not following school rules'.

The Expulsion Report states that the behaviour review conference occurred two weeks after Chris was alleged to have smoked the marijuana. It is not clear what Chris was doing in those two weeks, whether he was at school or was suspended.

The expulsion was appealed by Chris on three grounds: that the expulsion process was not followed; that the decision to expel was unfair; and that there had been a lack of prior interventions.

The Expulsion Review Panel Report recommended Chris' appeal be upheld on all four grounds available, including one (extenuating circumstances) that Chris had not specifically identified, noting:

The panel concludes that on the evidence provided [by the school] it was difficult to understand the timeline, what meetings were held and processes undertaken from the time of the incident for which [Chris] was expelled and the [behaviour review conference].

...on the evidence provided...[Chris'] involvement was not of such a magnitude that expulsion was the only mechanism available to address the behaviour and that alternative measures could have been taken.

The panel notes that the Expulsion Report suggests an emerging pattern of low level behavioural issues. There is no evidence of any support offered to address this.

The panel concludes the short time [Chris] had been at the [school] to be an extenuating circumstance that should have been taken into account in the decision to expel.

Lack of confidence in the process

284. The appeal process was a concern to several of the parents interviewed during the investigation. One parent interviewed felt the decision to uphold the expulsion had been made before the appeal was heard stating ‘basically we were walking into a *fait accompli*’

285. Another parent said:

[the Ministerial Order does not hold schools] strongly enough to account. ... They can manage the situation really, really poorly, there’s only a few boxes they have to tick based on that order and at the end of the day the way it’s written [the appeal panel] can say the principal complied with the order. Technically if you look at ticking the boxes he did comply with the order. Yes he notified us within the right time, there are very basic administrative things he has to do to comply with the order. There is nothing in the order around getting to the bottom of what has happened and understanding the situation. It talks about human rights and those sorts of things but it doesn’t provide any real criteria around those.

286. Some parents interviewed decided not to appeal an expulsion as they did not feel it would change the outcome and they did not want to further distress their child. A parent of an 11 year-old child with Post Traumatic Stress Disorder who had been expelled said:

So I can’t find another school if I go ‘well hang on a minute I want to appeal it’. That just pushes everything out for [my son] and he’s missed so much school over the years and he needs, he wants to be at school he needs to be at school. That if I did the appeal process and then pushed it out even further and further and further as well as, I’m trying to do a full time job, I’m trying to look after [my son] and make sure he’s okay which is my number one priority. I feel that he needed my focus rather than me putting all this energy into appealing something that was kind of like pushing shit up hill in a sense because they weren’t listening to what I said anyway¹⁰¹.

287. Another parent of an expelled 13 year-old child with Autism Spectrum Disorder said:

He’ll get back [to school], their attitude hasn’t changed, they’ve got no strategies in place they’re refusing to do anything. He’ll just get suspended and eventually expelled again. I said there’s no point appealing it because nothing’s going to change and by not appealing it I knew they had to give him another education pathway¹⁰².

101 Interview with Parent A, 9 November 2016.

102 Interview with Parent F, 12 December 2016.

Lack of independence

288. Consistent with parents' concerns about the presence of RASPs at behaviour review conferences, the involvement of RASPs in the appeal process led some parents to perceive a lack of independence. The following case study gives an example of the issues one parent has with the current appeal process.



Case Study 8

Ben's parents contacted the Ombudsman to discuss the expulsion of their eight year old son. Ben has been funded through the department's Students with Disabilities Program at Level 3 since prep under the severe behaviours category. The funding was used by the school to provide Ben with an aide for 23 hours per week. Despite this, Ben's parents said his behaviour was difficult to manage.

In grade 1, Ben began treatment for anxiety related to Autism Spectrum Disorder, including a change in medication. This resulted in improved behaviour, a decrease in his aggression, engagement in school and his learning to read. There were no major behavioural incidents and positive reports from the school. However, by term two Ben's behaviour deteriorated again and he was suspended a number of times after hurting teachers and children at the school.

After one particular incident Ben's parents were called and a Behaviour Review Conference was scheduled. At the conference Ben's parents discussed that he had been diagnosed with 'severe ADHD', was still seeing a range of specialists to assist with his behaviour, and that he was being medicated and receiving continuing treatment for his autism related anxiety. Ben's father said they left the conference optimistic:

...we went out of there thinking that maybe things aren't as bad as we thought and maybe [the Principal]...was going to put things in progress to help him stay at the school and continue on.

However, after the conference Ben was expelled. His parents appealed believing that given Ben's disabilities, the school had implemented insufficient strategies to support him. They specifically raised that Ben's funded aide was unable to cope with his challenging behaviour and instead of reviewing the aide's capabilities for the role, the school made a decision to share aide responsibilities between all the aides in the school without consulting parents or relevant professionals.

Of the appeal hearing, Ben's father said:

They have a panel there, of principals who come from your area. They all sit on the same boards, they go to the same meetings...so they all know one another and that's who you're meant to convince to say 'oh no this principal's wrong'. You're really pushing it up hill, you're putting your case to their peers...you're not going to get a true and fair hearing when, you know, you've got [the principal's] peers sitting there with her who she's got a working relationship with.

The appeal was denied.

Ben's parents report that he is doing much better at his new school, his behaviour has improved and the school manage him better. Ben's parents said that part of the improvement was that his treatment outside school continues to develop. Ben's mother said:

...that's what we were saying to the school, that's the whole thing, just give us some more time to keep working through these options [for treatment] and we would have been in the same place without the whole trauma and 6 months of lost schooling.

289. This is not to suggest the RASPs involved were not professional and impartial in performing their role; however, the perception was problematic for parents the investigators spoke with. One of the Regional Directors interviewed stated:

I just think it often puts principals in really difficult situations.

...

I can understand why parents would say 'This is a completely internal process reviewed by colleagues and other principals so where's the objectivity sitting?'¹⁰³.

290. A regional officer also said:

I think that stuff about the appeals panel is something I've always been concerned about and how that's even effective or useful in any way, shape or form. It just looks like an administrative tick box to me¹⁰⁴.

Lack of advocacy for the student in the appeal process

291. Seven of the parents interviewed for the investigation raised concerns about the lack of advocacy or support when appealing an expulsion. The following case study is an example.



Case Study 9

John's father contacted the Ombudsman and was interviewed about his son's expulsion from grade 6.

John has been diagnosed with anxiety and Attention Deficit Hyperactivity Disorder; his parents made the school aware of these diagnoses when they enrolled him in the school in grade 4. John's father said that the school initially worked 'hand in hand' with John's mental health provider to develop support plans. At the start of grade 5 John was medicated and his behaviour improved to the point that he was discharged from his mental health provider's care.

In term three of grade 6, the school contacted the family about a quite serious altercation between John and another boy; John was suspended.

John's father said that for three weeks he tried to contact the principal about the next steps for John and the principal informed him that expulsion was not being considered. During this period, John's suspension was extended twice. John's father stated:

...it ended up being 17 days a ridiculously long amount of time, it was detrimental to [John], he was at home, he had no engagement with friends, he had nothing to do. He was supposed to be given school work to do which he was but the engagement from his teacher was minimal. She didn't follow him up, he tried to communicate with her.

Despite these assurances, a behaviour review conference was eventually scheduled. John's parents were surprised that 'every little thing that [John] had ever done wrong going back to grade four was raised.

John was expelled and his parents appealed.

¹⁰³ Interview with Regional Director, Department of Education and Training, 22 February 2017.

¹⁰⁴ Interview with Senior Wellbeing and Engagement Officer, Department of Education and Training, 21 December 2016.

John's parents prepared their appeal submission with the assistance of a lawyer. John's father said the lawyer:

...analysed [Ministerial Order 625] and looked at the Human Rights Charter. I don't know how we would have put something like this together without that assistance.

Even with this assistance, John's parents found the appeal process difficult. John's father said:

... my wife and I are employed professionally, are well educated and relatively articulate and can present quite well, but ultimately this is not what we do; we are not trained in advocacy and found it difficult. You're not allowed to take anyone in of a professional status who can help you advocate, you can take a support person but it's got to be a family member or friend or something and can't be a professionally employed person.

The appeal was unsuccessful.

John's father said that he thought the appeals process could be improved by greater expectations on schools in the Ministerial Order and professional assistance for families during the appeal. He said that without some sort of assistance he felt that families who 'aren't trained to advocate or aren't articulate, maybe aren't from English speaking backgrounds haven't really got a chance.

292. In its response to the Ombudsman's draft report the department stated:

The Ministerial Order provides for language and advocacy support for parents, carers and students in the expulsion process.

293. These include information sheets for parents titled *Procedures for expulsion – Information for parents following your child's expulsion* that includes information on the appeal process. Another document available specific for Aboriginal and Torres Strait Islander students is titled *Fact sheet for parents and carers of Koorie children and young people*.

Unclear departmental guidelines

294. During the investigation it became clear that there were some inconsistencies in departmental policy regarding appeals, particularly for appeals on the grounds that the principal did not follow the expulsion process.

295. The School Policy and Advisory Guide lists a number of things that a principal *must* do and *should* do before, during and after a behavioural review conference and provides guidance about the Ministerial Order. It states:

Principals please note that throughout this guidance anything that is a legal obligation under Ministerial Order 625 is written as 'the principal must'. Where the guidance states that 'the principal should', this is a best practice recommendation. Expulsion appeals *on the basis of process* [emphasis added] can only relate to items that state 'the principal must' not occurring¹⁰⁵.

296. The distinction made between 'must' and 'should' is not relevant as the four grounds upon which students and their families can appeal an expulsion are set out in the Ministerial Order where no distinction between must and should is defined. This is confusing.

¹⁰⁵ Department of Education, *School Policy and Advisory Guide*, accessed at <http://www.education.vic.gov.au/school/gsparticipation/Pages/expulsionconsiderations.aspx> on 18 April 2017.

Informal expulsions

297. A common theme expressed during a period of scoping the investigation was the issue of informal expulsions, referred to by witnesses variously as 'exclusions', 'soft exits' or 'soft expulsions'. Accordingly, the investigation's fourth term of reference was to determine:

Whether the department is monitoring and preventing instances of informal expulsions, which occur outside a formal expulsion process.

298. For the purpose of the investigation informal expulsions are instances where a student (or their family) is encouraged or forced to leave a school without a formal expulsion process.

299. This can occur in a variety of different ways. A student or their family may be told to withdraw the student so they do not have a formal expulsion on their record. They may be encouraged to leave the school and enrol in a Victorian Certificate of Applied Learning (VCAL) or other education setting. These can include alternative education schools, TAFEs or other Registered Training Organisations.

300. In other instances a student may be placed on reduced hours or regularly suspended until their progress is sufficiently stymied that they will cease attending.

301. Informal expulsions are not permitted. The department's School Policy and Advisory Guide states:

Schools must avoid practices that:

- force students to transfer or withdraw from school; except when the student is expelled
- restrict entry to eligible students¹⁰⁶.

302. Despite this, none of the witnesses interviewed for the investigation, including departmental officers and school principals, were in any doubt that informal expulsions occurred.

303. In responding to the Ombudsman's draft report the department stated:

Any action by a principal or a school to exclude a student from education, outside of formal processes, is contrary not only to the Department's policy and guidance (as the draft report references) but also to the Ministerial Order.

The Department is very concerned about these instances and the impact they have on the wellbeing and future opportunities of the students involved.

304. The investigation met with 13 stakeholder and community groups involved with vulnerable young people in the four regions. The issue of informal expulsion was raised as significant in 11 of these meetings. Examples of informal expulsions mentioned to the investigation included:

- A secondary school student was suspended for assaulting students and staff. The school refused to allow her to return to the school, but has also refused to expel her. The school has threatened to call the police if she returns to the school.
- A secondary school student was told to leave the school after being caught with marijuana. The school said that she could come back a few years later in year 11 to complete VCE at the school.

305. Given the nature of informal expulsions, there are no figures on how many informal expulsions occur each year and which students are affected. Much of the evidence available is anecdotal. This will be revealed in this chapter in submissions, case studies and small sets of data from particular settings.

¹⁰⁶ Department of Education, *School Policy and Advisory Guide*, accessed at <http://www.education.vic.gov.au/school/gs/spag/management/pages/hours.aspx> on 30 March 2017.

306. While schools can record on CASES21 why a student is ceasing enrolment at the school, the investigation has been unable to find a specific policy that requires that schools record the reason for a student ceasing enrolment.
307. Further, as the case studies in this chapter will show, families can be more or less forced into withdrawing their child. This means that even if regular data was collected and analysed by the department on student exits, it still may not be sufficient to measure informal expulsions.
308. However, it is worth noting some other data available in order to frame a discussion of informal expulsions. There were 278 formal expulsions in Victorian government schools in the 2016 school year between prep and year 12.
309. In a review of school funding, undertaken for the former Premier, the Hon Steve Bracks, *Greater Returns on Investment in Education*, notes 'It is estimated that some 10,000 young Victorians from government and non-government schools drop out of school each year'¹⁰⁷. The department reported that in 2013, 6,800 of these students disengaged from government schools¹⁰⁸.
310. There are a variety of reasons a student may cease attending a Victorian school in any one year. They may move interstate or overseas, they may enrol in a TAFE or similar or they may enter the workforce.
311. However, there appears to be some disconnect between the 278 formal expulsions in 2016 across all year levels and the estimated 6,800 students in years 9 to 12 becoming disengaged. Somewhere in between is the figure for informal expulsions.

312. The issue of informal expulsions was highlighted in a 2016 report by the Youth Affairs Council of Victoria titled *Out of sight, out of mind? The exclusion of students from Victorian schools*. The report states:

...a number of stakeholders from the education and youth sectors have reflected to us that formal expulsions are only the tip of the iceberg. While some students go through a standardised, official process of being expelled from school, there are others who are encouraged or urged to leave. Anecdotally, it appears the numbers of students in this latter category are much higher than those who are officially expelled¹⁰⁹.

313. It should be noted that the department is piloting a new program that is attempting to re-engage students who have left school. The program, called Navigator, aims to assist students aged 12 to 17 'to re-engage with and education or training pathway'¹¹⁰. The program is part of the current government's Education State policy and is being trialled in eight sites across Victoria, a trial which was recently funded to extend until the end of 2018¹¹¹.
314. In its response to the Ombudsman's draft report the department stated:

Early data indicates that Navigator is already achieving success. Data from the end of March 2017 (10 months into the pilot) indicates:

- 496 young people are receiving case management supports through Navigator, and an additional 225 young people on the waitlist

¹⁰⁷ Department of Education and Training, *Greater Returns on Investment in Education: Government Schools Funding Review*, December 2015, page 3.

¹⁰⁸ Department of Education and Training, *Navigator: Program overview and specifications*.

¹⁰⁹ The Youth Affairs Council of Victoria, *Out of sight, out of mind? The exclusion of students from Victorian schools*, May 2016, page 17.

¹¹⁰ *The Education State, Navigator: program overview and specifications*, page 1.

¹¹¹ These are: Mallee, Central Highlands, Western Melbourne, Hume Moreland, Goulburn, Ovens Murray, Southern Melbourne and Bayside Peninsula.

- 270 Navigator clients have re-engaged in education, with 157 (58 per cent) returned to a mainstream school, 30 per cent returned to a flexible learning option and 12 per cent to a Registered Training Organisation.

Extending the pilot until the end of 2018 enables the department to build up a stronger evidence base of how the program is working and the best practice elements of a successful model.

Submissions

315. As no data is collected on informal expulsions, submissions and other information requested from individual organisations was important. This material not only highlighted individual cases of informal expulsion but also provided small data sets that help quantify informal expulsions.
316. One such submission was received from the Melbourne City Mission, which has established the Melbourne Academy (the academy) to 'provide supportive, flexible education to young people who are disengaged from education and to reconnect them with schooling'¹¹². In 2016 it had 209 students.
317. In preparing its submission Melbourne City Mission surveyed 35 of its students and conducted 16 interviews with students, teachers and wellbeing staff.
318. The survey revealed that 46 per cent of the students had been 'informally asked to leave' their school compared with 25 per cent who had been formally expelled¹¹³. Others had become disengaged for other reasons such as their personal circumstances or difficulties with other students at a school.
319. The interviews conducted with students from the academy give an insight into how informal expulsions can occur at a school. One student stated:
- I did get to complete year 11 and then when I wanted to complete year 12 they kicked me out because of my attendance. I couldn't go every single day because I had a baby. They asked my mum to come in and sat us down in the office and just told us that I needed to put my six-week-old baby into childcare so I could come to school five days a week as well as doing work experience. I told them I couldn't do that because I had a six-week-old baby and my mum couldn't look after him either¹¹⁴.
320. Another student stated:
- I was told to leave and that I couldn't finish year 11 and 12 because of my disability and my mental health as well. I was kicked out and sent to different schools and they couldn't handle me¹¹⁵.
321. A third stated:
- I was never formally suspended or expelled, I was kicked out and asked to leave. They just told me that the school was too big for me. They gave me a couple of alternative schools, like, behaviour schools, but they didn't really care once I left¹¹⁶.
322. Like the academy, there are other schools around Victoria that seek to re-engage young people in education who, for a variety of reasons have become disengaged. These schools are referred to as flexible or alternative schools.

¹¹² Melbourne City Mission, *Submission to the Ombudsman investigation into Expulsions at Victoria Government Schools*, December 2016, page 4.

¹¹³ *ibid*, page 14.

¹¹⁴ *ibid*, page 12.

¹¹⁵ *ibid*, page 12.

¹¹⁶ *ibid*, page 13.

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323. One of these is the Pavilion School. At the request of the investigation, the Pavilion School reviewed its student enrolments to give a sense of the prevalence of informal expulsions.
324. The school informed the investigation that of the 126 students who enrolled between 1 October 2015 and 30 September 2016, 25 per cent had been informally expelled compared with less than nine per cent who had been formally expelled¹¹⁷.

325. Although both the academy and the Pavilion School are in metropolitan Melbourne, it appears that the issue of informal expulsions also exists in regional Victoria. In August 2015 staff from the Highlands Local Learning and Employment Network interviewed 16 young people in the region about their educational experience. The resultant report, *Straight Up: The Lived Experience of Central Highlands Youth*, noted:

It is understood that the Department of Education and Training has policies in place relating to both suspension and expulsion however, none of the young people interviewed identified a process of investigation or that a behaviour review conference occurred prior to 'being kicked out of school'¹¹⁸.

Alternative or flexible learning placements

326. Alternative education settings such the academy and the Pavilion School have been set up for the purpose of re-engaging students. However, there was concern expressed by some witnesses that children were being moved into such alternative settings via informal expulsions.

327. A Regional Director interviewed for the investigation said of alternative settings:

I've seen it work well and I've seen it be a dumping ground and an exit strategy for those kids¹¹⁹.

328. Another regional officer echoed these concerns:

When it's seen as a dumping ground for kids with behaviour problems then it's wrong and it shouldn't work¹²⁰.

329. A submission to the investigation from Ballarat Community Health also raised concerns about the practice. The submission was informed by Ballarat Community Health's operation of two programs that aim to support students to remain in education, Youth Support Service (YSS) and School Focused Youth Service (SFYS). The submission stated:

The difficulties and frustration that YSS and SFYS have experienced are with Victorian government schools that disregard Department of Education and Training (DET) policies. These schools, instead of following expulsion or suspension protocols, use euphemisms such as 'moving a student on' to other forms of education (often outside the mainstream) or employment. This is done without informing DET of the student's movements¹²¹.

330. Such concerns were illustrated in a case study provided by a community organisation¹²².

117 Email from Pavilion School, 23 March 2017.

118 Highlands Local Learning and Employment Network, *Straight Up: The Lived Experience of Central Highlands Youth*, August 2015, page 38.

119 Interview with Regional Director, Department of Education and Training, 21 February 2017.

120 Interview with Senior Wellbeing and Engagement Officer, Department of Education and Training, 21 December 2016.

121 Submission from Ballarat Community Health, 27 February 2017, page 1.

122 The name of the community organisation has been removed to protect the identity of the student.



Case Study 10

A local primary school principal contacted a community organisation in mid-2016. The principal was concerned about the behaviour of a student, Jarrod. The principal stated that he felt that their school was 'inappropriate' for the student and asked if the organisation could recommend another school for the student.

The organisation discussed the issue with Student Support Services (SSS) at the department and a meeting was called where Jarrod's father, the principal and a lead teacher attended.

The father was angry that his son was continually being suspended and he was being contacted at work to pick up his son for what he felt were petty reasons (such as swearing in the schoolyard and talking back to teachers). The father explained that the student's mother was gravely ill and his son was visiting her sporadically in hospital.

The community organisation said it became evident that the poor behaviours were occurring immediately after these visits due to stress and trauma and offered to fund a hands-on learning program for the student once a week at the school, with other students also participating.

The school agreed, but the community organisation felt the school took a punitive approach and did not allow Jarrod to attend the program if he had poor behaviour in other classes.

Jarrod's father contacted the community organisation two months later, stating that the school had suspended his son for three days for wearing a cap in class that his mother had given him. The student's mother had passed away approximately six weeks earlier.

The community organisation discussed with the school how the student's grief and loss might be impacting on his behaviours and the value of using trauma informed approaches, but felt its advice was disregarded.

The community organisation felt the school was not interested in addressing the issues facing Jarrod and instead enrolled him in an alternative education program for two days a week at another school.

The community organisation described Jarrod as high risk, coming from a low socio-economic background and believed a parent advocate would have been of great assistance in this case. It stated that in the past a department-funded Education Broker has taken on this role, but this position no longer exists¹²³.

¹²³ Submission, 27 February 2017, pages 1-2.

331. Another example of a student being effectively forced into an alternative education setting through an informal expulsion is contained in the following case study. It is worth reiterating at this time that alternative or flexible education is primarily aimed at students who are disengaged from education.



Case Study 11

The investigation was put in contact with Luke's mother by a teacher at an alternative school. Luke was a student at the alternative school since being informally expelled from a vocational college. Luke's mother was interviewed to give her account.

Luke was in his final year of a VCAL program during which he would alternate between trade school off site and his VCAL program at the college. His mother attended the college to pick up some work for him and was called into a meeting with the principal. She said that, at this meeting, the principal told her Luke had been overheard talking to another student about buying marijuana.

Luke's mother stated the principal told her 'it's in my best interest for [Luke] to pull him out and move him on so that he does not have a criminal record. She asked if his locker had been searched or if the police had been contacted and was told that neither had occurred. No marijuana was ever found in Luke's possession.

Luke's mother was told that he was suspended for four days until she decided if she was going to 'fight' or withdraw him from the school. She sought assistance from the department and another meeting was held with two departmental officers in attendance.

Luke's mother wanted him to stay at the school. At this meeting Luke's mother was told that if she would not withdraw him from the school he would continue to be suspended and would fail on attendance.

Luke's mother made the decision to withdraw her son feeling the school was not going to allow him to return.

The investigation interviewed one of the departmental officers who attended the meeting. The officer confirmed that the principal had told Luke's mother to move him to another school but Luke was never formally suspended or expelled. The officer involved said that she reminded the principal of the procedures that needed to be followed:

...as regional officers it was my role and [other officer's] role to talk to the school about process, about how the situation was being handled, but it kind of fell on deaf ears... 'zero tolerance on drugs' that's all he [the principal] had to say.

When asked if she thought the situation was fair on Luke the officer said 'I think it was completely unfair.

Vulnerable groups

332. As with formal expulsions, evidence provided to the investigation suggested that vulnerable student groups may be more likely to be informally expelled. Though this is not possible to quantify, the anecdotal evidence from several witnesses and community groups highlighted the issue.

333. In a submission to the investigation, YACVIC and its partner organisations¹²⁴ stated:

...on the broader topic of student 'exclusion', the existing knowledge indicates that exclusion from school is often part of a bigger picture of disadvantage and marginalisation. Our members and stakeholders tell us that young people from disadvantaged backgrounds, young people with disabilities, and Aboriginal young people appear to be at higher risk than their peers of being excluded from school¹²⁵.

Students with a disability

334. The parents of a young child contacted the Ombudsman direct to give an account of their experience when their child was informally expelled.



Case Study 12

Matthew's parents contacted the Ombudsman when the investigation was announced and gave an account of their experience at interview. They stated that Matthew began to have behavioural problems and 'melt downs' when he started school in prep. By grade 1 Matthew had been diagnosed with Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder.

Matthew's parents immediately made his school aware of the diagnosis.

Through grades 1 and 2 Matthew was involved in various incidents and was suspended on several occasions. Midway through grade 2 Matthew's parents were called to a meeting with the school principal to discuss an incident from the day before where Matthew had allegedly attacked another student. Matthew's parents said that, at this meeting, the principal told them he wanted their son to leave the school. He was 7 years old at the time. Matthew's mother told investigators:

He [the principal] then handed me a piece of paper with a list of telephone numbers with schools in the area and said "here you can ring those schools and find another school for your son."

Matthew's parents said they never received a Notice of Expulsion and a behaviour review conference was never held. Matthew's father said at interview, '... we interpreted it as an expulsion and we didn't even query that he could do this.' Matthew's parents said that they tried 17 schools before they found one that was willing to accept Matthew and cater to his needs.

In the meantime Matthew was left without schooling for four weeks and both parents had to change their work, including Matthew's father giving up a management position.

Matthew's parents said he is doing well at his new school, but it took him 18 months to settle in and return to full time school hours as he was anxious and fearful that he would be expelled again. Matthew's mother told of the impact on her son:

Imagine...the Ford people who know their manufacturing plant is closing, they're all traumatised. Imagine what that does to a 7 year old who has never been to any other school, who has a severe problem with change, who is told from one minute to the next 'this is not your place anymore'... he was devastated.

124 The other organisations were the Youth Koorie Council, Victorian Student Representative Council and the Youth Disability Advocacy Service.

125 Submission from Youth Affairs Council of Victoria, 6 October 2016, page 4.

335. In its submission to the investigation, Parents Victoria provided the following case study of a student with a disability who stopped attending school in 2016 – their parent home schooled their child in 2017.



Case Study 13

Ryan, a primary school student diagnosed with Autism Spectrum Disorder, was regularly excluded from his classroom and Parents Victoria said the curriculum was not adjusted to the student's ability level. There were also concerns that tasks did not meet Individual Learning Plan goals as agreed at Student Support Group meetings and that Ryan was placed in another class without the school advising his parents or seeking their parental consent or advice.

Following an incident involving another student and a teacher, Parents Victoria said the principal determined the student was required to relocate to an alternative classroom. Despite concerns from the child's mother that her child was not being supported, Parents Victoria said the principal would not allow the child to return to the classroom. Ryan's mother would not permit her son to be placed in an alternative classroom as she felt her son was being unfairly punished.

The child's mother engaged the assistance of various organisations to attempt to provide support for her son including the Association for Children with a Disability, Disability Advocacy Services, Disability Legal Services, the Australian Human Rights Commission and Parents Victoria.

Despite these efforts, Ryan was not allowed back into his normal classroom and the stalemate meant he was out of school from the end of October 2016 for the rest of the school year. To ensure her son's continued education the mother enrolled him for home schooling in 2017¹²⁶.

336. The case study is not strictly an example of an informal expulsion but demonstrates an instance where the relationship between a parent and the school broke down and the parent felt they had no option but to withdraw their child.

337. In its response to the Ombudsman's draft report the department stated:

While the Department cannot comment on the particular circumstances of this case study, due to the de-identification of the student involved, this case study demonstrates a situation that principals sometimes face.

...

Where a principal has made this decision, they are expected to have taken into account all affected parties' human rights, welfare needs, legal rights and relevant interests.

Aboriginal and Torres Strait Islander students

338. Concerns were raised that informal expulsions were impacting Aboriginal and Torres Strait Islander students and were more prevalent among this group than formal expulsions. As already noted earlier in this report, Aboriginal children are overrepresented in formal expulsion figures.

339. When a Koorie Education Coordinator interviewed for the investigation was asked whether there were any themes in the expulsion of Aboriginal children they said:

Well the common theme is that they usually get exited before the expulsion¹²⁷.

126 Submission from Parents Victoria, 22 December 2016, page 3.

127 Interview with Koorie Education Coordinator, Department of Education and Training, 25 January 2017.

340. Similarly the General Manager of VAEAI said at interview that he felt informal expulsions or 'exclusions' as he called them were 'creeping in'¹²⁸. In its submission to the investigation VAEAI stated:

VAEAI is aware anecdotally of instances in other schools of apparent covert practice of 'exiting' selected students, where (a) the student's status becomes unclear because they are not subject to DET's formal expulsion process, and (b) the school's internal process is apparently non-transparent and unable to be authenticated, and so (c) the student and parents are disempowered¹²⁹.

341. VAEAI provided the following case study in a submission to the investigation.



Case Study 14

Stephen is an Aboriginal student who was undertaking VCE in 2016. The student had a disrupted 2016 as his grandfather was staying with the family during the final stages of palliative care. Meetings were held during the first half of 2016 between the student, his family and the school to help Stephen during his VCE given the disruptive home environment.

VAEAI said the school and Stephen's family also agreed that if Stephen did not do well on his assignment and exam tasks in the first half of the year, he could still look to complete his VCE without an ATAR score.

Stephen's mother replied that she wanted her son to get into university on merit and achievement.

In June Stephen and his parents were called into a meeting at the school. At this meeting, VAEAI said they were told that Stephen was behind in his subjects and had not performed well on his mid-year exams. As a result Stephen and his family were told that he was no longer to be a student at the school.

In its submission VAEAI noted that 'A school does not have authority to expel a student who does not meet the grounds for expulsion'.

Stephen's family sought the assistance of the department's regional office and a second meeting was held with the school in July. Stephen's parents stated that at this meeting the school said it no longer wanted Stephen to attend and did not want him to come back.

A Koorie Education Coordinator involved in the matter was interviewed as part of the investigation. When she talked about this case she said:

[Stephen] had a lot of issues at the start of school and he was falling behind and he told the school that he wasn't coping and they didn't do anything.

Stephen is now in full-time employment.

Students in out of home care

342. The issue of informal expulsion and restrictions placed on students in out of home care's access to education was also raised in submissions to the investigation.

343. In its submission, the Commission for Children and Young People noted 'educational outcomes for children and young people in out of home care are poorer compared to their non-care peers', citing its own 2014 inquiry which identified that 'many children in residential care do not attend school or any other structured program' and that many children in residential care require educational options outside mainstream schools.

344. In March 2016, the Commission established an inquiry into the educational status of children in residential care. It reviewed a small sample of material provided by the department and identified that none of the children sampled were attending mainstream or full-time education and that there were 'very few' enrolments at all.

128 Interview with General Manager, VAEAI, 14 February 2017.

129 Submission from VAEAI, 19 January 2017, page 1.

345. Another submission addressing this issue was received from the Mallee Accommodation Support Program (MASP), a service organisation funded by the DHHS working with Child Protection clients.

346. In its submission, it noted it supports 18 young people in out of home care, 13 of whom have a disability. These are highly vulnerable children many of whom have difficulties with education. In its submission MASP stated the difficulties they have with students regularly being suspended or excluded without the appropriate process being followed:

Multiple exclusions for young people in care generally are not provided with the formal paperwork and meaningful school work provided to them or the carer. In some instances the carer has been asked by the school to advise the young person they have actually been suspended. MASP do not have any recent cases where a young person has been expelled, it's more a case of multiple exclusions which results in disengagement and eventually school refusal. Re-entry to school after a suspension is generally not followed up with the entry meeting¹³⁰.

347. MASP provided a case study of a student it has been involved with who was becoming disengaged from education due to difficulties enrolling in school. While this case study is not strictly an informal expulsion, it is an example of children being refused access to education leading to the child starting to disengage from education.



Case Study 15

Rohan is an early secondary school student who had previously lived in the area and enrolled in a local school but then moved away with one of his parents. Rohan's parent relinquished care and he was returned to the area. As there were no home-based care placements he was placed into residential care. He had attended a local primary school and the plan was for him to transition to the local high school.

Concerns were raised by Rohan's care team around learning and speech difficulties and testing confirmed he has an intellectual disability.

MASP said the local high school at the beginning of term 1, 2016 refused Rohan's enrolment and suggested his enrolment sit with the specialist school. The specialist school also deemed his enrolment not suitable.

MASP said that Rohan became further disengaged from education and began to feel rejected. His behaviour at his residential placement continued to worsen resulting in multiple incident reports and criminal charges. The department's regional office became involved but it was still six months before an enrolment could be secured at a local high school.

By this stage Rohan was suffering anxiety and was refusing to attend school. At the time of writing the student remained disengaged from school.

¹³⁰ Submission from MASP, 20 March 2017, page 3.

348. This next case study was provided in another submission by a regional organisation¹³¹. It concerns the informal expulsion of a child in out of home care.



Case Study 16

The Ombudsman was contacted by a case worker who was interviewed about the informal exclusion of his client Caleb from a government school.

Caleb, an Aboriginal boy, experienced significant abuse. He showed signs of Post-Traumatic Stress Disorder, depression and anxiety, became involved in crime and was estranged from his family.

Caleb spent some years in residential care and was completely disengaged from education for at least two of these years. When he was in early secondary school Caleb moved to a regional area where he had family and community connections. He moved in with a kinship carer who enrolled him at the local school.

After two days at the school Caleb was suspended for swearing at a teacher and smoking. As a condition of his return, the school requested that the department assess Caleb's education needs to identify supports that he may require.

The department fast tracked the educational assessment, but the school refused to allow Caleb back. The school asked that Caleb undertake some sort of education outside of school to demonstrate his commitment to schooling. A tutor was identified, but Caleb was reluctant to cooperate because 'he saw it as a punishment and thought it was another way to exclude him from what he wanted to do'.

Caleb's case worker said that the department tried to advocate for his return to school and made suggestions for a gradual re-engagement, suggesting Caleb attend school a couple of hours a day with a full-time support person. The school refused to allow Caleb to return.

Caleb's case worker said the school denied that his criminal history was the reason for his exclusion, instead relying on his 'anti-social' behaviour at school that led to his suspension. Caleb's case worker said:

Between late July until December the school actively excluded him from being engaged in any capacity in the school setting.

[Caleb] spent a lot of time with his carer at home not doing very much and was really quite isolated. He has a lot of personal issues that he is working through as well and [his exclusion] exacerbated those and made it difficult for him to change his circumstances.

After being excluded for five months for swearing and smoking, Caleb was allowed to attend the school's alternative education setting on campus. Soon after, the school announced a rule that alternative and mainstream setting students could not associate at recess or lunch time. This left Caleb feeling isolated and excluded from his peer group.

¹³¹ The name of the organisation has been removed to protect the identity of the student.

Effect of disengagement from education

349. The positive link between education and better results in a person's life is well established. Similarly, a negative correlation exists between disengagement from education and difficulties for young people, including contact with the criminal justice system. This correlation highlights the importance of ensuring expulsions are used as a last resort and that expelled children are supported to engage in education.
350. DHHS provided data to the investigation relating to young people and their contact with the youth justice system. The data provides:
- A 'snapshot' of 1094 children and young people involved with the Victorian youth justice service on 7 October 2015, both in youth justice centres on remand and sentence, and in the community on bail supervision, deferral of sentence, community sentences, parole and interstate orders¹³².
351. The data includes the educational attainment levels of young people involved in the youth justice system both in the community and in custody. The data provided does not allow a full examination of educational attainment levels, however does show that educational attainment appears to be generally low.
352. For example, 74 of these young people had attained education to grade 6 levels only despite the fact that only four of the young people were under 13 years of age¹³³.
353. Sixty per cent of the group have completed year 9 or lower and seven per cent have not been educated beyond primary school age.
354. By way of comparison, Department of Education and Training data shows that in 2016 approximately 89 per cent of students in Victorian government schools had completed at least year 11 at school and were commencing year 12¹³⁴.
355. The figures provided by the Department of Health and Human Services regarding youth justice clients also revealed that there were high levels of suspension and expulsion within the group.
356. Of the 1094 young people surveyed, 60 per cent (651) had previously been suspended or expelled from school.
357. For the 150 students clinically assessed as having intellectual functioning issues, the percentage was higher: 70 per cent (105) had previously been suspended or expelled from school.
358. The negative correlation between a lack of education and interaction with the justice system has also been the subject of academic study. During the investigation, Professor Michael Kidd contacted the Ombudsman to advise of research he and colleagues had undertaken in Queensland.
359. The research project involved analysing whether a causal relationship existed between education and crime, using data provided by the Queensland education department and the Queensland Police Service. In particular, the research examined criminal offending before and after the compulsory school age in Queensland was increased from 15 to 17 in 2006.

¹³² Department of Health and Human Services, *Youth Justice Annual Client Survey 2015 – Summary of findings related to education*, provided 7 April 2017.

¹³³ *ibid.*

¹³⁴ <http://www.education.vic.gov.au/Documents/about/department/brochureapril2017.pdf> accessed on 10 April 2017.

360. At interview, Professor Kidd said the research showed that increasing the school age in Queensland led to a reduction in crime rates among young people aged 15 to 17. When asked why, Professor Kidd stated:

There are sort of two obvious possibilities... one is that if you invest in, if you stay in school a bit longer, presumably you acquire more skills and consequently that increases the earnings in the labour market, which makes a life of crime, other things equal, less attractive than doing normal work. So that's one possibility. The alternative is essentially that the reduction in crime comes solely from the fact that people are kept in school. They are incarcerated within the school system¹³⁵.

361. The research also found the reduction of crime rates extended beyond school years into adulthood¹³⁶.

362. This is an issue that was also raised in a submission from the Victorian Association for Restorative Justice. In its submission it noted:

Young people are often particularly vulnerable at the point when they become fully disengaged from a school. If alternative arrangements are not made quickly, responsibility for 'managing' the young person may shift from the Department of Education, to Justice (through police) and/or by Health and Human Services (through young workers, Children's Court officials and possibly also youth detention officers). Young people and other members of society are put at risk¹³⁷.

363. The submission further makes an explicit connection between school disengagement and recent youth crime in Victoria that has attracted significant media attention:

A common feature in many of the aggravated burglary cases has been that the fifteen, sixteen, seventeen year olds appearing before the Children's Court became disengaged from school, typically through suspension or expulsions, only shortly before becoming involved in significant offending. A recent generalisation about these cases, offered by an experienced Children's Court lawyer, is consistent with the research literature, and with the experience of other professionals in the field - that the need to belong has overridden the will to do right¹³⁸.

The Education Justice Initiative

364. One program that the department has set up to address these issues is the Education Justice Initiative (the EJI). The EJI was established in 2014:

... in response to the high level of school disengagement of young people appearing in the Criminal Division at the Melbourne Children's Court of Victoria. Research shows that almost one-third of the children appearing at the Melbourne Children's Court are not formally enrolled in any education setting, with many more enrolled but attending school [in]frequently¹³⁹.

365. The EJI is funded by the department and managed through Parkville College, which is the government school for children who are or have been in custody. EJI staff are based at the Melbourne's Children Court where they make contact with children coming through the court to establish if they are engaged in education and if they are not, offer assistance to re-engage them.

135 Interview with Professor Michael Kidd, Professor of Economics RMIT University, 13 January 2017.

136 Beaton, T, Kidd, M.P, Machin, S. & Sarkar, D. *Larrikin Youth: New Evidence on Crime and Schooling*, November 2016 page 4.

137 Victorian Association for Restorative Justice, *Submission from the Victorian Association for Restorative Justice to the Victorian Ombudsman's Investigation into School Expulsions*, page 3.

138 *ibid*, page 3.

139 http://parkvillecollege.vic.edu.au/?page_id=44 accessed on 11 April 2017.

366. The funding for the program included an allocation to pay for an independent evaluation of its progress. This evaluation was undertaken by Victoria Institute for Education, Diversity and Lifelong Learning at Victoria University, which published a report in December 2015 titled, *Education at the Heart of the Children's Court – Evaluation of the Education Justice Initiative*.

367. This report details the results achieved by the EJI as well as providing the reflections of students, their families and professionals in legal and human services who work with the same children.

368. The report states that between September 2014 and June 2015, over 950 individual young people appeared in the criminal division of the Melbourne Children's Court. The EJI made contact with nearly half of these young people and worked closely with 103 of them to re-engage them in education.

369. An analysis of the education background of this group of 103, referred to by the EJI as their clients, revealed the following:

- 32 per cent had been excluded from school¹⁴⁰.
- 46 per cent were not currently enrolled in education¹⁴¹.
- Of the 54 per cent enrolled:
 - less than five per cent had attended school in the week prior to meeting with EJI staff
 - less than two per cent had attended more than half of school days the previous month
 - 72 per cent had been disengaged from school for at least two months:
 - 34 per cent had last attended school between two and six months previous

- 17 per cent had last attended school between six and 12 months previous
- 21 per cent had been disengaged from school for more than a year.
- 44 per cent had five or more previous school enrolments¹⁴².

370. The report found that the EJI had been successful in re-engaging a high proportion of its clients back into education. Of the group of 103 young people, 68 became 'full clients' of the EJI and the report notes that as of 30 June 2015 75 per cent had been re-engaged with education.

371. The report highlighted the positive feedback from those who had been involved in the program. The parent of one of the children said:

It was a big deal, getting himself to school, one hour on public transport, after not going for two years. He went most days. The program had a positive impact on him and a big change even at home. He could see himself doing something¹⁴³.

372. A Koori Court officer said:

I know a few of the cases where you know, kids were disengaged from school for a couple of years and EJI staff re-engaged them. And to me, you can't actually put a value on that... just seeing the pride when they go back to school, that's the main thing that I've seen from these kids when they go back to school, the pride and the self-worth¹⁴⁴.

140 Exclusion was classified as either a) expelled; b) suspended; or c) asked by school not to attend.

141 This includes 17 young people over 17 years of age who are not legally obliged to be enrolled.

142 Victoria University, *Education at the Heart of the Children's Court – Evaluation of the Education Justice Initiative*, December 2015, pages 11-13.

143 *ibid*, page 38.

144 *ibid*, page 39.

373. The former President of the Melbourne Children's Court, Judge Couzens said:

I don't talk about expenditure, I talk about investments. I think everyone knows from the publicity that appears from time to time, the cost of incarcerating either adults or children is huge. So the more you can do, particularly with young people, to rehabilitate them, the fewer will graduate into adult crime and the less the community will have to pay, it's simple¹⁴⁵.

374. The investigation received a submission from the Neighbourhood Justice Centre (NJC)¹⁴⁶. The submission described the way different schools responded to their students' arrests after 'offending incidents' within the vicinity of Melbourne's Federation Square¹⁴⁷. Eight young men were involved in four separate incidents. The young men had no previous involvement with the criminal justice system.

375. The submission provided the following case study of one of the students involved in the incidents.



Case Study 17

In the days following the incidents, Corey was expelled by his secondary school. NJC said it was apparent that the school was responding to information from media coverage of the incidents displaying Corey's image in print media and on television.

NJC said Corey's mother told them that there was no discussion with the school prior to Corey's expulsion; there was no opportunity for Corey to explain his offending or for Corey and his mother to negotiate an alternative outcome that might have enabled Corey to remain at the school.

NJC said Corey's mother reported that following her son's expulsion, there was no effective conversation with the school to provide information or support for Corey to make the transition to an alternative education setting.

From the time of Corey's expulsion in early 2016, his mother tried unsuccessfully to find an alternative school for Corey to attend. She did this independently.

As a direct result of Corey's engagement with the justice system, Corey's mother made contact with the Manager, School Engagement Education Justice Initiative based at the Melbourne Children's Court. With the support of this Children's Court based program, Corey was able to re-engage with education at a new school.

Prior to this, he had been disengaged from education for over six months and was not engaged in any alternative daytime activity during this period.

¹⁴⁵ *ibid*, page 48.

¹⁴⁶ Neighbourhood Justice Centre, *Submission from the Neighbourhood Justice Centre to the Ombudsman's Investigation into School Expulsions*, 5 May 2016.

¹⁴⁷ *ibid*, page 1.

Conclusions

376. There are comparatively few formal expulsions from Victorian government schools each year. However, for those students who are expelled, this is a significant punishment and can have a profound impact on their lives. Apart from the rejection and trauma that being expelled may cause, children disengaged from school are also more likely to come into contact with the youth justice system.
377. The investigation's analysis of expulsions in 2016 found that most expulsions occur for students between years 8 and 10 and that boys are vastly over-represented. Perhaps more concerning, however, are the instances of children in the early years of primary school also being expelled. It is difficult to conceive of circumstances where the behaviour of children as young as five or six could be of such magnitude that expulsion is the only option available.
378. The expulsions that are occurring also disproportionately affect some of the most vulnerable student groups, including students with disabilities, those in out of home care and Aboriginal and Torres Strait Islander students.
379. These vulnerable groups are not sufficiently protected by the current Ministerial Order and there is a need for greater support from the department for these students. Whether other vulnerable groups such as recent arrivals are also over-represented is not known due to poor data collection within the department. There is a clear need for improvement in this area.
380. It must be acknowledged that the job of principals and teachers is a difficult one, balancing the high needs and difficult behaviour of some students with the educational needs of all students, as well as the safety and welfare of both students and teachers. In these circumstances, it is appropriate for expulsion to be considered as an option where other methods of dealing with the student's behaviour have failed – that is, it truly is a last resort.
381. But, in many cases, schools do not appear to be equipped with the resources, expertise and assistance, within the school and from the department more broadly, to provide the necessary support to students with higher needs; hence, the reliance on expulsion. The behaviour of these children may be extremely challenging, but it must be within the power of our education sector to support these children rather than simply shifting the challenge of the student's behaviour from one school to another.
382. Formal expulsions are not the full story. There is clear evidence, although a paucity of data, suggesting that informal expulsions are more prevalent, despite departmental policy prohibiting their use. These do not get recorded or allow for the mandated supports to assist a student to further their education as set out in the Ministerial Order for formal expulsions.
383. Formal and informal expulsions, along with a myriad of other reasons students stop attending school, mean that thousands of school-aged children exit the education system each year. There needs to be every attempt made to identify these students and keep them in education.
384. Not only does this improve their prospects but research demonstrates that keeping young people in education reduces their likelihood of committing crimes in their youth and in later life. The benefits for society are obvious.
385. The findings of a review into the Education Justice Initiative illustrate this point. The clients of the Education Justice Initiative were children who had come in contact with the youth justice system. Forty-six per cent of them were not enrolled in education at the time they appeared at the Children's Court and 32 per cent had been excluded from school.

Oversight and data

Oversight

386. In March 2014, Ministerial Order No. 625 replaced Ministerial Order No. 184 significantly shifting the level of departmental involvement in the expulsion process. Crucially, under the previous Ministerial Order a principal was required to notify the region if a student's expulsion was being considered. The Regional Director was then required to send an officer to the school to discuss the potential expulsion, to ensure that there was an appropriate plan for the student's future if the expulsion went ahead and to help implement this plan.
387. Under Ministerial Order No. 625 the power to expel a student is exercised by the principal alone. The department, through the Regional Director, is only notified of an expulsion after the fact (unless the student is in out of home care) and can only review an expulsion if it is appealed. There can also be departmental involvement after an expulsion if the school or parent asks for help in finding a new school for the student.
388. The record of expulsion provided to the Regional Director consists of the Expulsion Report and Notice of Expulsion, both completed by the principal. These documents do not provide sufficient information for the department or the Ombudsman to determine whether an expulsion has been carried out in accordance with the Ministerial Order.
389. What can be concluded is that close to two thirds of expulsions in 2016 did not meet the requirements of the Ministerial Order by virtue of the fact they are not recorded in the department's CASES21 system.

Data

390. The data collected by the department is haphazard, incomplete and insufficient to make informed policy decisions with respect to expulsions. This is surprising given the profound impact an expulsion may have on a student.
391. The department, at the request of the investigation, collated the full expulsion numbers for 2014, 2015 and 2016. The department's practice has been to only keep numbers for expulsions that occurred before August each year, meaning it does not know year on year how many expulsions are occurring for the full school year.
392. Further, despite it being a requirement of the Ministerial Order, only around one third of expulsions are recorded in CASES21. The data collection processes rely on a paper-based system where the only reliable record of an expulsion are forms, completed by the principal and sent to the regional office. There exists no other automated mechanism that allows for a centralised collection and qualitative analysis of expulsions.
393. This meant that the department had no reliable or easily accessible electronic records of the expulsions that had occurred in its schools. It also meant that the department had to undertake a time and labour intensive process to obtain the evidence required by this investigation from the Regional Offices.
394. From initial requests in late 2016, it took until May 2017 for the department to be able to provide a final number of expulsions that had occurred in Victorian government schools in 2016.

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395. Until the investigation undertook its analysis, there was no data available on expulsions for:
- children in out of home care
 - children with a disability
 - children with a mental illness
 - children who have recently arrived in Australia.
396. Apart from numbers on Aboriginal and Torres Strait Islander students expelled, this data was not kept by the department and is only available because of the analysis undertaken by the investigation.
397. Due to limitations in the data collected by the department this story is not complete.
398. The lack of data makes it difficult if not impossible for the department to recognise patterns in which students groups are being expelled and subsequently develop policies to address any issues identified.
399. In addition, the department does not collect data or track the outcomes for students who are expelled from government schools. This is surprising given the Education State initiative's focus on keeping more students in school and eliminating the connection between outcomes and disadvantage. Our analysis revealed that 61 of the students expelled in 2016 were out of school for over three months and for 79 students there is insufficient data to determine how long they were out of school.
400. The absence of data and the department's limited oversight of school expulsions, has contributed to the department's failure to identify and address the prevalence of expulsions among vulnerable groups and schools' non-compliance with the Ministerial Order, which seeks to protect students from unfair expulsions.

Formal expulsions

Observations

401. The Ministerial Order outlines basic requirements that a principal must meet when expelling a student. These requirements are not onerous; nevertheless, the investigation's review of the 2016 expulsions identified non-compliance with the Ministerial Order.
402. The investigation identified expulsion reports that failed to demonstrate how options other than expulsion were considered.
403. In addition, in at least 120 of the expulsion reports reviewed did not demonstrate that a student's behaviour was of such a magnitude that expulsion was the only available response.
404. It is reasonable and in line with community expectations that predictable, consistent and objective decisions are made across Victorian government schools. However, inconsistent decision making was evident across the 278 expulsions.
405. This was most striking in the expulsions that were related to drugs: a student caught smoking marijuana one time was punished the same way as a student dealing drugs in the school. Decisions to expel in some of these cases were questionable considering the department's drugs policy and public statements emphasising a student wellbeing approach to drug matters.
406. Principals are able to exercise their discretion within the parameters set by the Ministerial Order and with the exercise of autonomous decision making comes a level of subjectivity and can lack accountability. The issue is not whether principals have the discretion to make these decisions, but whether a young person's future at their school or future pathway should depend entirely on the view of one principal.

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407. The investigation also identified expulsions in which principals did not provide evidence to support the allegations against students. This is inconsistent with principles of good decision making.
408. Under the Ministerial Order, it is not mandatory that principals conduct a thorough investigation of the allegations against a student before proceeding with expulsion. While, departmental guidance states that it is best practice to conduct investigations, there is no obligation to, and failure to do so does not create a right of appeal. This was a concern to the investigation.
409. A young person at risk of expulsion ought to have an equal or greater expectation of protection than an adult facing potential termination of employment, not less. This is especially true when the expulsion numbers reflect an over-representation of young people from vulnerable groups.

Vulnerable groups

410. The investigation has found that Aboriginal and Torres Strait Islander students, students with a disability and students in out of home care were all over-represented in formal expulsion numbers in 2016.
411. For instance students who receive PSD funding represent around four per cent of the student population, yet they represent over 16 per cent of expulsions.
412. Despite the vulnerability of these groups there is a lack of protection in the current Ministerial Order and associated policies for expulsions. For instance, it is a requirement that the regional office be notified when a principal is considering an expulsion for a student in out of home care and international students.
413. However, for others such as Aboriginal and Torres Strait Islander students or students with a disability, such safeguards are optional and the evidence of witnesses in the investigation suggests it is not effective.

414. The instances of students with a disability being expelled is of particular concern. There is no requirement that the regional office be consulted and it can be argued that, as in some of the case studies in this report, the students were expelled for behaviour that is a result of their disability.
415. This brings into question whether the department is providing sufficient support for students with a disability and whether the expulsion of a student with a disability is discriminatory and a breach of the department's obligations under the *Charter of Human Rights and Responsibilities Act 2006*.
416. In its response to the Ombudsman's draft report the department stated:
- The issue raised is a very complex one (where the student's behaviours are a manifestation of their disability but despite provision of all reasonable adjustments the student is still behaving in a manner that endangers others). However, Ministerial Order 625 does require principals to take into account a student's disability (and other circumstances) when determining whether the expulsion is appropriate.

Trauma

417. Childhood trauma was regularly cited by witnesses and in submissions as a key area of concern regarding expulsions. Students suffering from trauma-related behavioural problems were identified as presenting a significant challenge for schools and one they were perhaps ill-equipped to handle.
418. No departmental data was available on how many of the students had been expelled exhibited signs of trauma. An analysis conducted by a clinical psychologist for the investigation showed that indicators of trauma were highly prevalent in a random sample of expulsion reports.

419. There is an obvious need for the department to continue to develop policies and support programs to assist students who have been exposed to trauma, and to equip schools and teachers with the skills and assistance to do so.

After expulsion

Future education, training or employment options

420. Children between 6 and 17 years of age are of compulsory school age. In Victoria universal access to education is provided through the government school and training system¹⁴⁸.
421. The importance of young people being in school is highlighted in the Ministerial Order, which requires that the principal, in collaboration with the regional office, ensure that the student is provided with other education or development opportunities as soon as practicable after expulsion, and that the plan is documented in the Expulsion Report.
422. The investigation identified that, contrary to the Ministerial Order, principals often provide details of a plan for future education or training upon expelling a student and the department does not monitor compliance with this requirement.
423. It was only after a request from the investigation that the department was able to provide information about where the majority of the 278 students ended up after expulsion. The investigation was concerned by the amount of time many students were disengaged after expulsion and that for some students their destination was unknown.
424. Given what is known about the adverse outcomes for disengaged young people, including increased contact with the criminal justice system, it is critical that the education system comply with the Ministerial Order and places children in education or training as a matter of urgency if they are expelled.

Appeals

425. Evidence to the investigation from parents was that the appeals process is unclear, contradictory and does not provide adequate support for students and their families while they try to navigate the process.
426. Parents told the investigation that they lacked confidence in the process, one describing it as a *fait accompli*. Parents also felt that RASPs were too closely aligned with the expelling principal to be an independent voice during the expulsion review. At interview, a Regional Director said that they could understand why parents felt this way.
427. The majority of parents interviewed raised concerns about the lack of advocacy and support during the appeals process, especially when faced with the expertise and resources of the department. Some expressed concerns that it would be that nearly impossible for parents with less education or who spoke English as a second language to be able to navigate the appeals process.
428. The guidance material for parents appealing an expulsion makes an unnecessary distinction between the use of 'must' and 'should' in the Ministerial Order as grounds for an appeal.

¹⁴⁸ Part 1.2.2(1) of the *Education Training and Reform Act 2006*.

429. The grounds under which an expulsion can be appealed are themselves already set out in the Ministerial Order and should not be qualified in departmental guidance material. This has the potential to confuse students and their families and discourage appeals.

430. Thirty-eight per cent of appealed expulsions were overturned by the department in 2016. Of these, five out of the eight overturned expulsions were because the expelling school failed to follow the process outlined in the Ministerial Order. This indicates that too often schools are expelling students contrary to departmental expectations and the requirements of the Ministerial Order. Our analysis demonstrates that this issue is not confined to those expulsions that were appealed.

Informal expulsions

431. Informal expulsions are not permitted, yet they are clearly occurring. All departmental witnesses acknowledged that informal expulsions occur in government schools. The case studies in this report as well as submissions to the investigation provide further evidence.

432. Despite this, it does not appear that the department is taking effective action to prevent or monitor instances of informal expulsions. Some case studies identified instances where regional officers were aware of a school's intention to informally expel, but nothing was done to prevent it. Perhaps because the officers felt powerless to do something; or because they perceived the child would be better off in another school.

433. There was no reliable way for the investigation to get data on informal expulsions as there is simply no data kept by the department. The number of informal expulsions is not known nor is any indicative number available.

434. As was noted in the report, there were 278 students expelled in 2016 yet the department states that around 6,800 students per year disengage from government education between year 9 and 12. It can only be concluded that somewhere between these two figures is an indicative number for informal expulsions.

435. The small data sets the investigation obtained from two alternative education providers, the Melbourne Academy and the Pavilion School, show that informal expulsions were approximately twice as prevalent as formal expulsions amongst its students.

436. Based on these small data sets and the witness evidence and submissions provided to the investigation, it is reasonable to conclude that informal expulsions are more common than formal expulsions, perhaps much more common.

437. As with formal expulsions there is evidence in the form of case studies and submissions that vulnerable groups may be more likely to be informally expelled but there is unfortunately no data available to confirm this. The department does not routinely keep records of why students move from one school to another.

438. There is a clear case for more to be done regarding informal expulsions. The issue cannot be addressed adequately until the department is able to measure the scale of the issue and fill in the significant gaps in the data.

Results of efforts to re-engage students and reduce expulsions

439. The evidence highlights significant areas for improvement with respect to formal and informal expulsions. However, the investigation also received evidence of successful efforts to re-engage students and reduce expulsions:

- **LOOKOUT Centres**

LOOKOUT Centres provide professional development and support to schools, carers and child protection practitioners to improve educational outcomes for students living in out of home care. As of Term 1 2017, LOOKOUT Centres are operating state-wide. A principal leads the Centres, which consist of a multidisciplinary team with skills in education, psychology, social work, and expertise in the particular educational and cultural needs of Aboriginal and Torres Strait Islander children and young people. Through LOOKOUT, nominated teachers in government and Catholic schools are trained to become Designated Teachers, who 'act as advocates for kids in care, ensuring high expectations for their learning and development and ensuring the best interests of every child is given the highest priority'.

The LOOKOUT Centre in South West Victoria Region was the first Centre to be established. By the end of 2016 it was already demonstrating an impact, reducing the number of expulsions of students in out of home care in the region from 9 in 2015 to zero in 2016.

The Victorian Government reported that, as a result of the pilot, the 'number of students in out of home care in the region who were not enrolled in school declined from 64 to 17 by December 2016 and expulsions reduced to zero'. The government reportedly aims 'for every school in Victoria to have a trained Designated Teacher by the end of the year'¹⁴⁹.

- **The Education Justice Initiative**

The EJI was established in 2014 'in response to the high level of school disengagement of young people appearing in the Criminal Division at the Melbourne Children's Court of Victoria'¹⁵⁰. EJI staff make contact with children coming through the court to establish if they are engaged in education and if they are not, offer assistance to re-engage them. An evaluation of the program found that the EJI had been successful in re-engaging a high proportion of its clients back into education. Of the group of 103 young people it worked with, 68 became 'full clients' of the EJI and, as of 30 June 2015, 75 per cent had been re-engaged with education¹⁵¹.

149 <http://www.premier.vic.gov.au/improving-education-for-kids-in-care/> accessed on 7 June 2017.

150 http://parkvillecollege.vic.edu.au/?page_id=44 accessed on 11 April 2017.

151 Victoria University, *Education at the Heart of the Children's Court - Evaluation of the Education Justice Initiative*, December 2015.

- **Project to improve students' social and emotional skills**

As detailed on page 35 of this report, in response to 'high rates of students being exited from class for misbehaviour, and of students being suspended or expelled for incidents involving disruption, defiance and aggression' the North West Victoria Region implemented a series of actions to improve students' social and emotional skills. Since the project commenced, the Regional Director reported there has been an almost 50 per cent reduction in students being removed from class or suspended for misbehaviour; and a reduction in the number of students expelled from 12-18 in 2013-15 to four in 2016.

- **Responses of individual schools**

Case studies one and two of this report also detailed parents' satisfaction with the support provided to their children in their respective new schools after expulsions and a reported lack of support from other government schools.

Opinion - section 23(1) of the Ombudsman Act 1973

440. On the basis of the evidence obtained in the investigation, the Department of Education and Training appears to have acted in a manner that is wrong¹⁵² by failing to effectively oversee expulsions at Victorian government schools during the 2016 school year – in particular, by failing to:

- ensure that expulsions occurred in accordance with Ministerial Order 625
- keep adequate data regarding expulsions in light of the impact on a child
- monitor and ensure that students expelled are provided with further educational or development opportunities
- monitor and prevent incidents of informal expulsion.

152 Section 23(g) of the *Ombudsman Act 1973*.

Secretary's response to the Ombudsman's draft report

Every Victorian child and young person has the right to receive a high-quality education, regardless of background or circumstance. Education plays a key role in the life trajectory of all children and it is essential that they are supported to stay in education in order to reach their potential.

Your investigation's preliminary conclusions highlight a number of concerns for the Department about the practice of expulsions and the impact this has on students. While it is reassuring that expulsions are a rare occurrence in the Victorian government school system, I welcome the opportunity to improve our education system and its support for all children and young people.

Your report identified a number of concerns about vulnerable groups. It is particularly troubling that expulsions disproportionately affect some of our most vulnerable cohorts, particularly students with disabilities, those in out of home care and Aboriginal and Torres Strait Islander students. The cases of expulsion affecting children in the early years of primary school are equally troubling.

It is vital that students from vulnerable backgrounds are able to benefit from the opportunities that education can provide and I share your concern that expulsions will have a detrimental impact on their educational outcomes. While the Department provides a range of supports, resources and programs for these cohorts, it is clear that there is a need for stronger oversight in this area to ensure we can better monitor practice and intervene early. Cases relating to primary school aged children, particularly the earlier years, also require a higher level of scrutiny.

Your report acknowledges the complex and challenging task that principals and teachers face in balancing the duty of care to vulnerable students with behaviours of concern with the duty to ensure the safety and wellbeing of all students and staff.

As you have indicated, more effort is required to ensure that schools are well-equipped to support such students to engage in education and this includes assistance from the Department more broadly. The new expertise now available in the Department's regions and areas, introduced through the Learning Places operating model reforms in 2015, presents a key opportunity to do this.

Initiatives such as the LOOKOUT Education Support Centres, which you highlight in your report, show promise in addressing the education challenges of a vulnerable cohort- namely children and young people in out of home care. Established statewide from Term 1 this year, LOOKOUT has already had a very positive impact on rates of expulsions for this cohort of young people, by combining capacity building of school-based staff with regional oversight and monitoring to increase both the educational expectations and outcomes. We are exploring opportunities to build on the learning from this model.

Your report also identified the need for better collection of data and improved record-keeping regarding expulsions. This will be an important area for further work, both at the Department and school level. Accurate and timely data is vital for informing earlier intervention and identifying and addressing impacts on particular cohorts, as well as providing assurance and support regarding the future education pathways of students subject to expulsion.

Under the current Ministerial Order, the Department's central oversight role in the expulsion process is minimal, up until the point of an expulsion appeal. The Department provides supports and additional information to schools and parents in the expulsion process, as provided in the Ministerial Order, such as language and advocacy support for parents, carers and students, and other resources to assist parents and carers in the expulsion process under the Student Engagement and Inclusion Guidance (the Guidance). There is an opportunity to improve the supports provided to families in the appeals process, and ensure there is greater clarity around the appeals process itself.

You raise concerns about the Department's role in monitoring and preventing incidents of informal expulsions. Any action by a principal or a school to exclude a student from education, outside of the formal processes, is contrary to the Ministerial Order and the Department's policy and guidance. The Department shares your concerns regarding these instances of informal expulsions, and the impact they have on the wellbeing and future opportunities of the students involved.

Recommendations

To the Minister for Education

Recommendation 1

441. Amend Ministerial Order 625 to ensure that a principal cannot expel a student aged 8 years old or less from any government school without the approval of the Secretary or her delegate and consider any additional changes to the Order necessary to give effect to the recommendations that follow.

Minister's response:

I support your proposed recommendation for amendment to the current ministerial order. The Victorian Government is committed to transforming Victoria into the Education State. That means every Victorian child and young person is supported to remain engaged in education, so that they reach their potential, regardless of background or circumstance.

A significant challenge for schools is also ensuring the safety and order of the school, in order to protect the learning environment for all students and staff and to allow for effective teaching. Every Victorian child and young person should have the opportunity to learn in a safe, positive and supportive classroom environment.

As you are aware, I have asked the Department to review its suspension and expulsion policy to ensure that it aligns with the Education State targets to reduce the number of students who disengage from education. The Department's review of suspension and expulsion policy will be informed by and address the findings and recommendations of the Ombudsman's report.

This includes consideration of further potential amendments to the Ministerial Order 625 governing suspensions and expulsions, to ensure all students, particularly vulnerable groups are supported to remain engaged in education.

As part of its review, the Department will also consult with our stakeholders to ensure that we can draw from their expertise in the finalisation of our reform proposals.

To the Department

Recommendation 2

442. Embed the principle and expectation in policy or guidance that no student of compulsory school age will be excluded from the government school system (even if expelled from an individual government school).

Department's response:

The department supports this recommendation.

Recommendation 3

443. Introduce an assurance system to monitor compliance with the Ministerial Order for expulsions, to be undertaken at least once annually. Noting that the legislative obligation under section 2.1.1 of the *Education and Training Reform Act 2006* is on the parent to enrol a student of compulsory school age and ensure they attend a school (or are registered for home schooling), this should include consideration of the following:

- a. all students of compulsory school age who are expelled be supported to be enrolled in another government school, or are appropriately supported to engage in other educational options, within one month of expulsion; and
- b. all students who are expelled and not of compulsory school age, are provided with advice and support to engage in other educational, employment or training opportunities.

Department's response:

The department supports this recommendation.

Recommendation 4

444. To inform policies and programs aimed at preventing disengagement and expulsions, collect and report publicly, to the extent possible considering privacy laws, each year on the following data:

- a. the total number of expulsions each year
- b. the outcomes for students expelled each year (eg whether they were re-engaged in education, employment or training following expulsion)
- c. students with a disability or mental illness who receive supplementary funding
- d. Aboriginal or Torres Strait Islander students
- e. students in out of home care
- f. newly arrived migrants, refugees and asylum seekers
- g. primary school students.

Department's response:

The department supports this recommendation.

Recommendation 5

445. To enable more robust data collection, amend the Expulsion Report templates so that they reflect the requirements set out in the Ministerial Order, as well as reference to responsibilities under the *Charter of Human Rights and Responsibilities Act 2006*.

Department's response:

The department supports this recommendation.

Recommendation 6

446. Amend department policy and guidelines to ensure that:
- a. principals ‘thoroughly investigate’ the incident or incidents that lead to an expulsion, and fully document this process to strengthen procedural fairness for students
 - b. senior regional office staff be directly involved when expulsion is being considered for:
 - i. students with a disability (including mental illness) who receive supplementary funding
 - ii. Aboriginal or Torres Strait Islander students
 - iii. students in Out of Home Care
 - iv. newly arrived migrants, refugees and asylum seekers
 - v. primary school students.
 - c. specific staff in regional offices and, where appropriate, other agencies, are nominated to provide support services and advocacy to assist students and their families during the expulsion process, including if an expulsion is appealed.

Department’s response:

The department supports this recommendation.

Recommendation 7

447. In light of the apparent success of the Education Justice Initiative, Navigator and LOOKOUT pilots, the department develop and pilot a model to support schools to develop challenging behaviour prevention and early intervention strategies for all students with high needs and complex behaviours (including students with disabilities) that have an impact on the safety and wellbeing of themselves and others. This should involve a multi-disciplinary approach with expertise, support and advice from appropriate allied health, clinical, safety, human rights and regional staff provided to the school to support the student, and a support service for principals to access when considering expulsion.

Department’s response:

The department supports this recommendation.

Recommendation 8

448. In order to prevent informal expulsions:
- a. implement mandatory and timely reporting to the relevant regional office by the principal when a student leaves a school via means outside a formal expulsion where this is preceded by behaviour or discipline issues involving that student.
 - b. require that the parents or guardians complete a form regarding the student exit including whether they agree to the exit and report on the next educational, employment or training opportunity for that student.

Department’s response:

The department supports this recommendation.

Appendix one: Expulsion report



Education
and Training

EXPULSION REPORT

This *Expulsion Report* must be completed by the principal and forwarded, with a copy of the *Notice of Expulsion*, to the Area Executive Director within 24 hours of the expulsion taking effect. When preparing this *Expulsion Report* care should be taken to provide all of the relevant information and documentation that was considered as part of the decision making process. This information becomes an important record of the decision to expel and the reasons this decision was made.

SCHOOL INFORMATION

SCHOOL NAME	
SCHOOL NUMBER	TELEPHONE
PRINCIPAL'S NAME	
PRINCIPAL'S CONTACT NUMBER	

STUDENT INFORMATION

NAME	
DATE OF BIRTH	YEAR LEVEL
GENDER	VSN
TELEPHONE	EMAIL
ATSI <input type="checkbox"/> YES <input type="checkbox"/> NO	OUT-OF-HOME-CARE <input type="checkbox"/> YES <input type="checkbox"/> NO

RELEVANT PERSON DETAILS

NAME
TELEPHONE/EMAIL
RELATIONSHIP TO STUDENT

EXPULSION DETAILS

DATE OF EXPULSION

GROUNDS FOR EXPULSION

(Please tick relevant box(es))

- | | |
|---|---|
| <input type="checkbox"/> behaving in such a way as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person; | <input type="checkbox"/> consistently engaging in behaviour that vilifies, defames, degrades or humiliates another person based on age; breastfeeding; gender; identity; impairment; industrial activity; lawful sexual activity; marital status; parental status; physical features; political belief or activity; pregnancy; race; religious belief or activity; sexual orientation; personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes; |
| <input type="checkbox"/> causing significant damage to or destruction of property; | |
| <input type="checkbox"/> committing or attempting to commit or is knowingly involved in the theft of property; | <input type="checkbox"/> consistently behaving in an unproductive manner that interferes with the wellbeing, safety or educational opportunities of any other student. |
| <input type="checkbox"/> possessing, using or selling or deliberately assisting another person to possess, use or sell illicit substances or weapons; | |
| <input type="checkbox"/> failing to comply with any clear and reasonable instruction of a staff member so as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person; | |

Provide a detailed description of the student's behaviour including a summary of the evidence relied upon by the school.

Relevant supporting documents should be attached if appropriate.

RELEVANT CONSIDERATIONS

EDUCATIONAL NEEDS OF THE STUDENT

DISABILITY OR MENTAL ILLNESS OF THE STUDENT

AGE OF THE STUDENT

RESIDENTIAL AND SOCIAL CIRCUMSTANCES OF THE STUDENT

PREVIOUS INTERVENTIONS TO SUPPORT STUDENT
(i.e. details of staged response)

OTHER DISCIPLINARY ACTION TAKEN TO MANAGE STUDENT'S BEHAVIOUR

ADDITIONAL INFORMATION / DOCUMENTATION PROVIDED BY STUDENT AND RELEVANT PERSON
(Documents can be attached if required)

OTHER RELEVANT INFORMATION

SUMMARY OF OTHER OPTIONS CONSIDERED TO ADDRESS THE STUDENT'S BEHAVIOUR (INCLUDING BOTH SUPPORT AND DISCIPLINE)

BACKGROUND INFORMATION

PLEASE PROVIDE A BRIEF HISTORY OF THE STUDENT'S TIME AT THE SCHOOL

FURTHER ACTION

ARRANGEMENTS THAT HAVE BEEN MADE FOR THE CONTINUING EDUCATION, TRAINING OR EMPLOYMENT OF THE STUDENT

TRANSITION PLAN

Detail the transitional arrangements for the continuing education, training or employment of the student including the process in which the student will continue to be provided with appropriate work. Attach copy of any *Student Absence Learning Plan* (if appropriate).

ACTION PLAN TO IMPLEMENT TRANSITION

RECOMMENDATIONS OF ANY FURTHER ACTION

Outline changes or strategies that can be made to the school, local, regional or system level to prevent a repeat of similar circumstances.

PRINCIPAL'S NAME

SIGNATURE

DATE / /

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