

# Home Education in New Zealand and Australia: State responsibility and parental choice

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## Abstract

**"I suppose it is because nearly all children go to school nowadays, and have things arranged for them, that they seem so forlornly unable to produce their own ideas"**

Agatha Christie

*There is evidence that more and more parents in the developed countries worldwide are choosing to educate their children at home. This is despite, or because of, the existence of comprehensive government education systems which assume state responsibility. New Zealand and Australia, in common with countries in the European Community, the United States and Canada have education legislation which aims to ensure that education is free, available and compulsory to all children generally between the ages of 5 and 15.<sup>1</sup> Government schools are publicly funded and this funding inevitably comes with varying degrees of state control. There is also, in New Zealand and Australia, private and church education available for those parents who want a formal education for their children outside the government system. Despite these alternatives, parents are increasingly electing not to entrust the education of their children to any of the formal systems and are choosing instead to assume sole responsibility for this education. How do governments respond to this exercise of parental choice? This paper examines the current legal position of home education in New Zealand and Australia. It considers the reasons so many parents are now choosing to opt their children out of schools and keeping them at home; and the extent to which the state supports them in this choice.*

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## Introduction

Education began in the home. Publicly funded schools were then established. Nowadays, for increasing numbers of children, school has returned to the home, and their teachers are their parents. Many explanations have been advanced for this trend. The New Zealand Education Review Authority (ERO), in its 1998 report, *"The Quality of Homeschooling"*,<sup>2</sup> grouped the reasons why parents today are choosing to school their children at home into three categories: family philosophy (which includes religion); concerns for the child's well-being; and family and local school circumstances. Clearly there are both negative and positive factors. A desire to insulate children from the negative influences and behaviour which are perceived by many to be a feature of schools today may underlie the drive of many parents to keep their children at home. Parents who give concerns for their child's well-being as a reason for choosing to home school cite unhappiness at school because of bullying and conversely, the child's unacceptable behaviour in the school environment. Also within this category are factors such as the child's ill health and problems with language and a child's newness to New Zealand. It is eight

1 There are some variations in these ages between countries.

2 Retrieved from <http://www.ero.govt.nz>.

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years since this research was done and New Zealand has seen an exponential increase in immigration since that time. It is hoped that the latter reasons would not feature as highly in a survey conducted today as the education system, together with society as a whole, has become more sensitive to the large numbers of new immigrants and their children and has adapted accordingly. Among the reasons given as family and local school problems there are factors which relate to family mobility and access to schools. Deficiencies in the local government school are mentioned but surprisingly the perceived lack of quality of formal education does not feature highly.

Terry Harding, principal of the home schooling association, the Australian Christian Academy sets out six primary reasons for Australian parents' choice of home schooling their children. These reasons are not dissimilar to those advanced in New Zealand, but with the addition of implied quality considerations in (iii):<sup>3</sup>

... (i) religious beliefs; (ii) a heightened sense of parental responsibility for education; (iii) a commitment to high literacy and numeracy for their children; (iv) promotion of social development of their children and avoidance of negative peer influences; (v) practical reasons such as distance from school or financial need; (vi) the special educational and health needs of their children.

Universally a significant number of decisions to home school are founded on religious or cultural grounds. In the US and Australia, two of the primary organizations which promote home education, the Home School Legal Defense Association and the Australian Christian Academy School of Distance Education both have their foundations in the desire of parents to educate their children in an atmosphere of Christianity, perceived to be lacking in government education by virtue of its secular nature. Censuses conducted in the US in 1999 and 2003 showed an increase in the number of children being home schooled from 850,000 in 1999 to 1.1 million in 2003. In 2003 30% of parents gave the provision for their children of religious or moral instruction as the most important reason for their decision to home school. There, as in New Zealand and Australia, the form of Christianity of home schoolers tends to be outside the 'mainstream' religious dogma, such as Roman Catholic, Church of England or Presbyterian belief which is taught in denominational schools.

## Education: state or parental responsibility?

Whatever specific reasons may be given it is however the fundamental belief in the parental responsibility for education which drives many parents to home school their children. Harding (above) cites the US research of Ray<sup>4</sup> in stating that 'home educating families share a common belief that the education of children is primarily their responsibility'.<sup>5</sup>

The assumption by the state of responsibility for education guides policy and legislation in New Zealand and Australia. In New Zealand this view was clearly spelt out in 1938 by the Minister of Education, the Hon Mr. Peter Fraser in his Annual Report to Parliament:<sup>6</sup>

The Government's objective, broadly expressed, is that every person, whatever his level of academic ability, whether he be rich or poor, whether he lives in town or country, has a right, as a citizen, to a free education of the kind for which he is best fitted, and to the fullest extent of the powers.

3 Harding, T. & Farrell, A. (2003) 'Home Schooling and Legislated Education' *Australia and New Zealand Journal of Law and Education*, Vol.8, 125, at pp 128-129, quoting from Harding, T.J.A. (1997) "Why Australian Christian Academy Families in Queensland Choose to Home School: Implications for Policy Development". Unpublished thesis, Queensland University of Technology, Brisbane, Queensland, Australia.

4 Ray, B.D. (1992) "Marching to the Beat of Their Own Drum: A Profile of Home Education Research" Salem, OR: Home School Legal Defence Association.

5 Harding, T. & Farrell, A. (2003) 'Home Schooling and Legislated Education' *Australia and New Zealand Journal of the Law and Education*, Vol.8, 125, at p 128.

6 (1939) AJHR EI, 2-3.

The interest of the government in pursuing its responsibility to fulfill such objectives and, in so doing, maintaining a measure of control over education, is best described in the New Zealand Government's 1993 statement of national educational goals:

Education is at the core of our nation's efforts to achieve economic and social progress. In recognition of the fundamental importance of education, the Government sets the following goals for the education system of New Zealand.

The highest standards of achievement, through programmes which enable all students to realize their full potential as individuals, and to develop the values needed to become full members of society.

Equality of educational achievement for all New Zealanders, by identifying and removing barriers to achievement ...

In International Law, Article 13 of the International Covenant on Economic, Social and Political Rights (ICESCR) and Article 28.1 of the United Nations Convention on the Rights of the Child (UNCROC), expressly spell out the right of every child to education, thereby imposing on states the duty of providing that education. In fulfillment of the international provisions above, the *New Zealand Education Act 1989 (NZ)* provides, in Section 3, that every person in New Zealand who is not a foreign student is entitled to free enrolment and free education at any state school between the ages of 5 and 19.

The entitlement of each person, and the obligation of the state with regard to education, was affirmed in New Zealand in the context of special education in *The Attorney-General v Daniels*.<sup>7</sup> The majority of judges of the Court of Appeal held that the right of all persons to education exists as a basic responsibility of the government to provide an education system. The government discharges its obligation by the provision of a state education system within a legislative framework.<sup>8</sup> Keith J in delivering the judgment of the Court said:<sup>9</sup>

To repeat, while there are rights under the 1989 Act that can be enforced by court process [such as natural justice on suspension and expulsion], those rights do not include generally, and abstractly, formulated by the Judge [Baragwanath J of the High Court at first instance]. Rather, the rights are essentially those specifically established by and under legislation which, to recall the Judge's formulation, do in themselves provide for a regularity and system and are designed to ensure appropriate quality.

So, in essence 'education' is a general right to partake of a system as provided by and delivered pursuant to legislation, rather than a specific right, breach of which would be enforceable by individuals.

So, while not justiciable per se, there is nevertheless an individual right or 'entitlement' to, and a state's responsibility for education. The assumption is that government funding of education is an investment in the future intellectual capital of the nation, which carries with it the right to control what, where, when and how children are to be taught in order to ensure educational quality. It is this control aspect which most troubles many of the parents who are committed to home schooling their children.

7 [2003] 2 NZLR 742 (CA). This case is referred to above.

8 While concerned with different aspects, a similar view on the common issue relating to the right to education was taken very recently by the House of Lords in *Ali (FC) v Headteacher and Governors of Lord Grey School* [2006] UKHL 14, and in *R (on the application of Begum (by her litigation friend, Rahman)) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15, delivered on the same day.

9 [2003] 2 NZLR 742 (CA).

## The environment of education in New Zealand

All government, integrated and private schools in New Zealand must teach the national curriculum and are subject to review by the Chief Officer of the Education Review Office.<sup>10</sup> Government schools are funded by central government but in 1989 administration of schools was devolved from central government to locally elected boards of trustees. In terms of Sections 75 and 76 of the *Education Act 1989 (NZ)* a school board has, subject to the laws of New Zealand, complete discretion to control the management of the school 'as it thinks fit'. A school's principal is vested as the board's chief executive in relation to that control and management. The board of trustees of each school is required to formulate a charter<sup>11</sup> of the school's aims, purposes and objectives and must follow the nationally formulated National Education Guidelines.<sup>12</sup> Before preparing the proposed charter a school board must consult with members of the school community.<sup>13</sup> The charter acts as a three-way contract between the school, the community and the state, in return for government funding the school board guarantees to fulfill their charter, comply with the National Education Guidelines and cater, as far as possible within such constraints, to the needs of the community. The philosophy behind the act is that of community empowerment, enabling all persons within a particular community to have input into the character, aims and objectives of the school. The legislation aims to create a system of government schooling which is seen as appropriate and relevant to each parent. It could be thought that a by-product of such community involvement in the environment in which their children are educated could be that fewer parents may choose to home school but rather that they would become involved in making the local school more relevant to them. However, the numbers of New Zealand parents who choose to school their children at home continues to rise.

### ... and in Australia

The first schooling of children in Australia was essentially in the hands of the church. Convicts were largely the first settlers and among them were a number of children. Then there were children born in Australia to convicts and other settlers. These increasing numbers of children were taught in the first formal schools which were established largely by the Anglican Church. By the middle of the nineteenth century in the colonies of New South Wales, Victoria, Tasmania, Queensland and Western Australia there were both church and non-denominational schools which were state aided.<sup>14</sup> By 1895 all the Australian colonies had passed education acts which effectively removed state education from the church and established the responsibility of the state to educate children. Education was free, compulsory and secular and an affirmative duty was placed on any person who had custody of a child to ensure that child was enrolled and attended a school generally between the ages of six and fourteen years, with penalties imposed for a failure in that duty. Receiving adequate education elsewhere was a reasonable excuse from attendance at a government school and the church continues to be a significant provider of independent education in Australia to the present day.

Government education remains the responsibility of individual state governments, and the legislation of each state recognizes the states' obligation to educate. Each education act contains the principles which underlie the state provision of education to varying degrees of specificity. The *Education Act 1990 (NSW)* of New South Wales is alone in placing the primary responsibility to educate on parents, and expressing the State's responsibility in terms of ensuring that every child receives a high quality education. Section 4 states that the principles on which the Act is based are:

10 In the case of state and integrated schools, Part XXVIII *Education Act 1989 (NZ)*, and private schools, s 35A of that Act.

11 ss 61-64 *Education Act 1989 (NZ)*.

12 s 60A *Education Act 1989 (NZ)*.

13 s 61(3) *Education Act 1989 (NZ)*.

14 For a comprehensive explanation of the development of formal education in Australia see Shorten, A. (1996) 'The Legal Context of Australian Education: An Historical Explanation' *Australia and New Zealand Journal of Law and Education*, Vol.1(1), 2.

- (a) every child has the right to receive an education;
- (b) the education of a child is primarily the responsibility of the child's parents;
- (c) it is the duty of the State to ensure that every child receives an education of the highest quality;
- (d) the principal responsibility of the State in the education of children is the provision of public education.

One of the Act's principle objects is stated in Section 5 (d) as 'to allow children to be educated at home.' Despite the wording in Section 4 (b) the use of the word 'allow' places emphasis on the state control of education.

The Australian Capital Territory Education Act 2004 begins Section 17, which deals with the general principles of the Act, by expressing education in terms of the right of every child to receive a high-quality education. It then proceeds to expressly recognize home education as an alternative means by which this right may be satisfied by its express inclusion, together with state education, in its provisions. It states that a high-quality education is based on the principle that 'school education and home education provide a foundation for a democratic society' and that 'school education and home education' should 'encourage parents to take part in the education of their children, and recognize their right to choose a suitable educational environment for their children' (Section 4(2) (b) (iii)). The rhetoric of this Act is goes further than those of the other states. It does not simply recognize the ability of parents to choose, but it positively encourages home education.

## Home education in New Zealand

58 Section 20 of the *Education Act 1989 (NZ)* provides that all children must be registered in a registered government, non-government or integrated school between the ages of six and sixteen. The legislation makes no express provision for home schooling. Under Section 21 parents wishing to home school their children must apply for an exemption from the requirements of Section 20. A certificate of exemption will be granted on a parent's application if an officer designated by the Secretary of Education is satisfied that the person: '(i) Will be taught at least as regularly and well as in a registered school ...'<sup>15</sup> That there is no definition of 'as well' and 'as regularly' is a matter of concern to home scholars.<sup>16</sup> In order to gain an exemption certificate, a parent wishing to home school must provide enough information to satisfy the officer that this criteria is being met.

Home-scholars point out that by its very nature home schooling is different to schooling in a formal classroom atmosphere. In discussing the forms supplied by the Ministry of Education for making an application for exemption, they argue:<sup>17</sup>

Parts of it [the form] are irrelevant. For example, describing the children's work area is, in our opinion, a complete waste of time. When the children are say baking, they will work in the kitchen. When they are shopping, they will be in the shop. They may do times tables and spelling in the car. They may do reading on Mum or Dad's lap – or in bed. They may be part of sports or other clubs. When writing, they may be at a computer, on the floor, at the dining table, or a lounge table, or a desk, depending on a number of factors ...

Another area that often causes concern is the request for a timetable. Many people at the Ministry cannot see that the children can learn as regularly as in a school without following a school-like timetable. This ignores the fact that home-based education is much more time-effective than classroom-based teaching. At home we don't generally have to take rolls, control 20-30 children etc...

<sup>15</sup> s 21 *Education Act 1989 (NZ)*.

<sup>16</sup> <http://www.home.school.nz/homelaw.shtml>.

<sup>17</sup> *New Zealand legal and administrative issues*, retrieved from: <http://www.home.school.nz/homelaw.shtml>.

New Zealand home schooling parents are of the view that, while they are not legally bound to follow the national curriculum, Ministry requirements for exemption endeavor to fit their schooling into the formal schooling model. This does not recognize the essential differences which go to the nature of home education and which lend strength to parent's belief in the value of schooling their children themselves.

While the government has always assumed the responsibility to review parents who are schooling their children, the system for such review has undergone many changes. In 1989 the Education Review Office (ERO) was established pursuant to the new school administration regime (discussed above). This body replaced the school inspectors who were attached to the disestablished Department of Education. From 1989 until 1994 ERO was responsible for the regular monitoring of the programmes of parents who were home schooling their children. Between 1994 and 1997 due to financial constraints, reviews were only undertaken by ERO when a complaint had been made to the Ministry of Education. Since 1997, because of the concern with the increase in home schooling (between 1993 and 2000 the numbers doubled) and the lack of accountability of home education, reviews began to be carried out on a regular basis, in much the same way as the process for reviewing formal schools. There is now in New Zealand a specialist home schooling unit within the Ministry of Education. The introduction of this unit was welcomed by home scholars as it was thought that it would lead to an 'improvement in consistency' and a 'better understanding of the various styles of home education'. There is as yet no evidence available as to whether this has been the case though a home scholar comments that: 'The ERO [Education Review Office] appears to be taking a more professional approach to us ...'<sup>18</sup>

The role of ERO in conducting the regular reviews is to judge first whether the child is being 'taught at least as regularly and as well as in a registered school' in terms of the legislation, and secondly, whether the terms upon which the exemption was granted are being met. The reviews are conducted using the programme specified on the Certificate of Exemption as a basis, in the student's home and with the involvement of the exempted student. The Certificate of Exemption may be revoked following an unsatisfactory ERO report. In its March 2001 report, ERO stated that in the reviews conducted in the period from 1999 to 2001 90% were satisfactory; the conclusion in 7% was that the children were not taught at least as regularly and as well as in a registered school; and no conclusion could be reached for 2% of students.<sup>19</sup> In some cases ERO will conduct follow-up reviews based on the following criteria:<sup>20</sup>

- the education programme is lacking in particular areas only – children are not at risk of failure in the short term;
- providers can improve the programme;
- there is a willingness to improve the programme provided; and
- the child is under emotional/medical stress that may be exacerbated by trying to return him or her to formal education.

Following these follow-up reviews ERO may report satisfaction with the outcome, in which case the Certificate of Exemption is continued, or report to the Ministry of Education when the programmes are not yet completely satisfactory. In its 2001 report, ERO concluded:<sup>21</sup>

The results of this investigation indicate that, with few exceptions, parents who choose to homeschool their children do so in accordance with the terms of their exemption. In general, the home schooled children in this study appeared comfortable with the process, were progressing educationally, and their socialization was not at risk. Many parents saw particular benefits resulting from their decision to home school their children.

18 "New Zealand legal and administrative issues", <http://www.home.school.nz/homelaw.shtml>.

19 "ERO Reviews of Homeschooled Students", March 2001, retrieved from <http://www.ero.govt.nz>.

20 As set out in n 19, pp 13-14.

21 n 19, p 14.

Home schooling parents receive an annual allowance which is paid from the date on which the exemption is given. Some parents decline to accept this allowance on the philosophic basis discussed above, that education is a parental not a state responsibility and to accept state funding is to accept state control over what their children are taught and how they are educated. However, it seems that this refusal is academic only as the schooling by those parents is subject to review, whether accepting the government contribution or not.

The most recent statistics in New Zealand available from the Ministry of Education show the position as at 1 July 2003. At that time there were 6,437 home scholars registered, and these belonged to 3,627 families, and this represented less than 1% of the total school enrolments. While this percentage of children is small it is of considerable significance that the number of home scholars has increased substantially, from 3,141 in 1993, an increase of 104%.

## Home education in Australia

In Australia, not all states and territories make specific legislative provision for home education. As may be expected, by the principles enunciated in their education acts above, the states of New South Wales and the Australian Capital Territory make the most clear and detailed provision.

In the Australian Capital Territory (ACT), Chapter 5 of the *Education Act 2004 (ACT)* begins its express provisions relating to home education, by stating the principles as:<sup>22</sup>

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- (a) parents have the right to choose a suitable education environment for their children;
  - (b) there is a diversity of religious and educational philosophies held by parents providing home education for their children;
  - (c) the diversity of educational philosophies reflects the preferences of parents to particular forms of education for their children;
  - (d) home education is committed to :
    - (i) offering a board range of opportunities that foster in each child the development of the child's unique spiritual, emotional, physical and intellectual being; and
    - (ii) Valuing the individual needs, interests and aptitudes of each child; and preparing each child to become an independent and effective local and global citizen.

This part of the Act then provides for system of registration for home education, beginning with provisional registration which lasts 6 months,<sup>23</sup> registration which lasts for two years,<sup>24</sup> and renewals of registration for further two year periods.<sup>25</sup> Section 132 sets out the conditions for registration for home education which are that the parent must provide high-quality education for the child, document the educational opportunities and strategies they use, and make available for inspection on request any 'education programs, materials or other records used for home education.' A register is kept of all children who are currently registered for home education and each parent must provide an annual report about the educational progress of each child.<sup>26</sup> Registration for home education may be cancelled if a parent has contravened a condition of home education.<sup>27</sup> All these express provisions serve to reinforce the responsibility of the state and state control of education. Despite the lofty ideals set out at the beginning, the provisions could be said to position home education as a deviation from the norm rather than as an individual and equally valid choice by parents.

In New South Wales (NSW), Section 22 of the *Education Act 1990 (NSW)* provides for a parent to register a child for home schooling '... under Division of Part 7 [of the Act] and to receive instruction

22 s 128 *Education Act 2004 (ACT)*.

23 s 130 *Education Act 2004 (ACT)*.

24 s 131 *Education Act 2004 (ACT)*.

25 s 132 *Education Act 2004 (ACT)*.

26 s 138 *Education Act 2004 (ACT)*.

27 s 135 *Education Act 2004 (ACT)*.

in accordance with the conditions to which the registration is subject'. Sections 70-81 contain the substantive provisions for the registration for home schooling. They provide that an 'authorized person', defined in Section 70 as a [Education] Board inspector of similar person, may advise the Minister on a parent's application for registration to home school. Based on that recommendation the Minister may register or decline to grant registration to a parent. Registration is granted for a period of two years and is subject to conditions imposed by the Minister.<sup>28</sup> Registration may be cancelled if the home schooler fails to provide education in compliance with the conditions, or fails to allow access to an authorized person to the premises where the education is being provided.<sup>29</sup> This Act provides that a parent may conscientiously object on religious grounds to registration as a home scholar and a certificate of exemption from registration may be granted for two years. The child concerned is however, in terms of exemption from compulsory schooling, regarded as registered for home schooling.<sup>30</sup>

In Western Australia (WA) the *School Education Act 1999 (WA)*, in similar vein to NSW and ACT, provides for a system of 'registration' of home education. Section 47 of that Act requires a parent to apply for registration as a home educator providing such 'documentary evidence' as is required by the 'chief executive officer'. That officer, if satisfied may register that parent as the child's home educator and issue the parent with a certificate of registration.<sup>31</sup> In contrast with ACT and New South Wales, that registration lasts indefinitely unless cancelled. Under Section 50 'home educator moderators' are appointed to evaluate the programmes and the educational progress of children who are being home educated. Such evaluations must be made within three months of the registration, and at least once in every 12 month period.<sup>32</sup> It is of interest to note that the grounds which for determining that a child's home education is not satisfactory and thus a certificate for home education may be cancelled include:<sup>33</sup>

- (a) whether the child's educational progress is in accordance with :
  - (i) the curriculum framework under the *Curriculum Council Act 1997*; or
  - (ii) any condition to which an exemption under section 11 of that Act is subject;
- (b) the effect of the physical learning environment on the child's educational progress;
- (c) any other matter which, in the opinion of the chief executive officer, is relevant to the child's education.

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Home educators are required to implement the curriculum framework unless granted an exemption under Section 11 of the *Curriculum Council Act 1997 (WA)*. However the Department of Education states that:<sup>34</sup>

One of the key principles of the curriculum framework is flexibility. It is intended that the framework be used flexibly in the delivery and evaluation of home education. Parents who choose home education do so for a variety of reasons, and the forms of education that they wish to provide to their children are diverse. In implementing the framework, home educators structure learning opportunities according to their children's particular needs. Monitoring and reporting on the program and progress by the home educators will also be approached in a number of ways. Consistency is also important. The Curriculum Framework provides the learning outcomes expected of all students for assessment that is fair and contributes to continued learning.

<sup>28</sup> s 73 *Education Act 1990 (NSW)*.

<sup>29</sup> s 74 *Education Act 1990 (NSW)*.

<sup>30</sup> ss 78 & 81 *Education Act 1990 (NSW)*.

<sup>31</sup> s 48 *School Education Act 1999 (WA)*.

<sup>32</sup> s 51 *School Education Act 1999 (WA)*.

<sup>33</sup> s 53 *School Education Act 1999 (WA)*.

<sup>34</sup> "Home Education", Department of Education and Training, Government of Western Australia, retrieved from <http://www.eddept.wa.edu.au/regframe/index.cfm>, at p 2.



Tasmania similarly provides for registration of home educators in Section 17 of the *Education Act 1994 (Tas)*. In common with WA, registration is not for a limited time period but it lasts until the child reaches 16 or until the end of their period of compulsory schooling.<sup>35</sup> Registration may be subject to conditions, and may be revoked if the parent has 'failed to comply with or contravened any condition of registration; or 'the Minister is satisfied it is in the best interests of the child to do so'.<sup>36</sup>

In the other states of South Australia, Queensland and Victoria, and in the Northern Territory, legislative provision for home education is on a similar basis to New Zealand. A parent who wishes to home school is not expressly required to 'register'. Rather the choice to home school is accepted more by default, as an exemption from compulsory enrolment and from attendance in formal schooling. In New Zealand, there is very little difference in reality, as there is still a strong measure of control exercised by the government agency ERO.

In South Australia, the sole recognition in the *Education Act 1972 (SA)* of education outside a formal school, is contained in Section 81A which provides that the Minister may grant an exemption from the compulsory enrolment provisions of Section 75. That section provides for compulsory enrolment to be satisfied by enrolment in a government school, a non-government school, a special school or correspondence school.

In the Northern Territory the *Education Act (NT)* provides that a parent may, as an alternative to enrolling a child in a government or non-government school, 'provide education for the child which is efficient and suitable'.<sup>37</sup> However, the parent must obtain the consent of the Secretary of Education before providing such education and it is in the discretion of the Secretary whether the education complies with the standard of 'efficient and suitable'. A definition of 'efficient' or 'suitable' is absent from the legislation.

Changes are afoot in the manner in which home education is provided for in education legislation in both Queensland and Victoria.

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Currently, a Queensland parent wishing to home school his or her children must apply, under Sections 115 and 116 of the *Education (General Provisions) Act 1989 (Qld)* for dispensation from the compulsory education provisions of Section 114 of that Act. Among the reasons considered to be valid for such dispensation are:<sup>38</sup>

- (a) that the child concerned is receiving , in the opinion of the Chief Executive, instruction :
  - (i) in a place other than a State school of a non-State school in accordance with guidelines approved by the Governor in Council; or
  - (ii) in a range of subjects acceptable to the chief executive, in some other manner which, in the opinion of the chief executive is efficient and regular; ...

That Act then contains, in Part 13 Validation provisions for home schooling dispensation and guidelines for home education to be promulgated by Order in Council.

The proposed changes are in the *Education (General Provisions) Bill 2006* which is at the second reading stage in the unicameral Parliament in Queensland. This Bill proposes, within an omnibus of reform, to create a registration requirement for parents wishing to home school their children, in line with the provisions in NSW, ACT and WA. There is little evidence of opposition to this change by home-

<sup>35</sup> Registration may be extended for two years if required to allow a child to complete their compulsory education.

<sup>36</sup> s 17(5) *Education Act 1994 (Tas)*.

<sup>37</sup> s 21(1)(b) *Education Act (NT)*.

<sup>38</sup> s 115 *Education (General Provisions) Act 1989 (Qld)*.

scholars, and it is anticipated that the new law will be in force towards the end of 2006.<sup>39</sup> The apparent lack of controversy may be because there is already, as in New Zealand, a significant measure of control exercised by the State Government over home education. This is not the case in the State of Victoria.

### Home education in the State of Victoria – current issues

The Victorian State Parliament has recently passed the *Education and Training Reform Act 2006 (Vic)* which substantially alters the provisions relating to home education. Its predecessor, the *Education Act 1958 (Vic)* made no provision relating to home schooling. The *Community Services Act 1970 (Vic)* provides that it is a reasonable excuse for a parent whose child is not attending school that the child is under 'efficient and regular instruction in some other manner'.<sup>40</sup> The assumption is that a child not attending school is a truant and the onus is on the parent to prove the opposite.<sup>41</sup> In the view of the Victorian Department of Education and Training the lack of regulation of home education has many disadvantages, particularly as the only means by which the efficacy of a home schooling situation can be tested is for the Department to prosecute parents under the truancy provisions. Such a prosecution took place in 1990 when a group of home schooling parents declined to allow the Department to assess their programmes. In *Greenwood v Slee* the Magistrate stated that in his view:<sup>42</sup>

It is the responsibility of the Ministry of Education to ensure that all children receive an adequate education. The defendants in this matter have displayed a reluctance to communicate with ministry personnel in respect to their program. Common sense would say that this communication should take place, however, it is not required by law.

The current Minister of Education for Victoria has stated that her ministerial responsibility dictates that she must ensure that each child in the State receives a quality education. She believes that in order to comply with this duty she must be in a position to enquire about how that education is provided and the quality of such education, and to take action if there are deficiencies.<sup>43</sup> The State Government believes also that having accurate records of the numbers of children who are being home schooled is vital for it to be able to gauge trends for future planning.

The new legislation has been passed in response to this policy. The *Education and Training Reform Act 2006 (Vic)* received the Royal Assent and became law in May 2006 and it is expected to come into force later this year. A new body called the Victorian Registration and Qualifications Authority is to be created and this will be charged with ensuring the accountability of all education providers for the quality of education. Parents will be required to register to educate their children at home. However, the approach to review of home educators is softer than in other states, WA for example. Instead of being subject to regular review, home schooling parents will be required to present a yearly statutory declaration by which they will attest that their children have 'completed a year of education that is of suitable standard and comprehensiveness according to their age'. Also in variance with other states, such as WA, home schooling parents will not be required to teach curriculum. However, the Ministry states that:<sup>44</sup>

<sup>39</sup> *Education Laws for the Future*, Department of Education and the Arts, Queensland, retrieved from: <http://education.qld.gov.au/review/index>.

<sup>40</sup> s 74C(3)(a) *Community Services Act 1970 (Vic)*.

<sup>41</sup> s 74F *Community Services Act 1970 (Vic)*.

<sup>42</sup> Unreported, Benalla Magistrates Court, 11<sup>th</sup> October 1990, Magistrate Mr Cosgriff S.M., *Education and Training Reform Bill – Home Schooling Consultation*, retrieved from: <http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>, at p 2.

<sup>43</sup> *Education and Training Reform Bill – Home Schooling Consultation*, <http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>, at p 3.

<sup>44</sup> *Education and Training Reform Bill – Home Schooling Consultation*, retrieved from: <http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>, at p 8.

It is intended that the eight key learning areas form the broad framework in which young people completing their schooling should be familiar with in order to participate fully in the wider society.

The demonstration of 'regular and efficient instruction' may be fulfilled by the production of material such as learning materials and completed assessments. A review will only be undertaken only where the Authority 'has reason to suspect or believe that a student registered for home schooling is not receiving regular and efficient instruction in the key learning areas. This 'hands-off' approach is reinforced by Clause 5.8.4.1(b) of the new Act which provides that Authority personnel are prohibited from visiting the residences of home schoolers without their consent.

In Victoria the proposals for change focused debate anew on the question of where the responsibility lies for education. In the words of home schooler Terry Harding, Principal of Australia's largest home schooling association, the Australian Christian Academy:<sup>45</sup>

Governments are good at running schools and schooling. The Victorian Government has no experience of running home education, not has it demonstrated any knowledge of the wonderful results of home schooling in Victoria, over the past 20 years. There is no good reason for it to interfere in such a specialized educational practice that is working so well ... The proposed changes indicate a gross lack of understanding of homeschooling by the government.

A further intention of the new law is to establish a Home Schooling Advisory Group to advise the new Authority on matters relating to home schooling and to make curriculum materials and resources available to parents of children who are registered for home schooling, and to enable children to access many school-based activities.

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The aim and the approach of the Act to home education appear commendable. It could be thought that it is an attempt by the Government to address the criticism by providing a mechanism whereby it may increase its knowledge or understanding of home education by having more ready access to home schoolers and their programmes. It is not seen that way by many of the people most concerned. It could be that the philosophical differences relating to the responsibility for and the control of education, upon which opposition to the new provisions is based, are incapable of resolution.

## Conclusion

Evidence suggests that the home education of children is gaining in popularity. There are many reasons advanced for the choice of increasing numbers of parents to eschew the formal education systems. These are both negative and positive and a combination of idealism and practicality. At one extreme are the parents who have such an enhanced feeling of responsibility for their education of their children that they argue against all forms of state control. Then there are those parents whose children are removed from school, or are from the outset outside the formal education system, because of factors which render attendance at a school practically difficult, inappropriate, and unsuitable or not in the best interests of the child. In reality most home schooling parents would sit in the middle ground.

The education legislation of New Zealand and of each state and territory of Australia provides essentially for two different approaches to home education. One is that the recognition of home schooling as a choice for parents is by default only, by allowing for the granting of an exemption or dispensation from compulsory enrolment and attendance in a government, non-government (or, in New Zealand,

<sup>45</sup> "Homeschooling: Don't 'Fix' What Isn't Broken" Retrieved from Home School Legal Defense Association : <http://www/hslida.org/hs/international/Australia/>.

integrated school). Generally however, in order to gain and retain such exemption, the parent must demonstrate that the child is receiving an efficient education of an adequate standard.

Alternatively, education legislation provides that home schoolers must apply for registration. This registration is granted on the production of evidence which satisfies the government authority concerned that the education provided is adequate and efficient and, in some states and territories, complies with curriculum. Registration in some cases is more closely controlled by provision for re-registration every two years. There are varying standards of strictness in terms of review of home education, from the proposed yearly statutory declaration, with review only on complaint (as newly introduced in Victoria), to the stringent review and moderation provisions of the Western Australian and the New Zealand legislation. There is clearly a move towards the 'registration' approach, with such provision being included in more recently enacted legislation (in ACT and Western Australia) and in new and proposed legislative measures (in Victoria and Queensland). Clearly while this move demonstrates a much greater acceptance of home education as a legitimate choice for parents, it does place it on a similar footing to all non-government education.

The argument for the implementation of policy requiring the formal registration and review of home schooling is that the state has an interest in ensuring the economic wellbeing of its citizens and the growth of its intellectual capital. From the early steps towards nationhood, the governments of New Zealand and Australia have unquestionably assumed the responsibility for education by providing for state systems in which education is free and compulsory for all citizens. The state acknowledges however that the responsibility for education is shared with parents, in providing for penalties for parents who fail to ensure enrolment and attendance of their children at a school. A choice of alternatives to state education is provided in non-government and integrated schools. Home education is increasingly being recognized as a further viable option for parents who wish to take a greater share of that responsibility. This is as it should be.

It is axiomatic that the state's responsibility must extend to an assurance that the education provided is of a sufficiently high quality. With increasing numbers of parents choosing to educate their children at home, it becomes even more important that the government has mechanisms for ensuring that each child is receiving such an education, wherever and by whomever it is provided. All schools, whether they are government, non-government or alternative, are subject to review to ensure that quality is maintained. This is also as it should be, and it is important for the well-being of all children that all parents should acknowledge and accept the need for such review. It is equally important however that, in the case of home education, such review should recognize and celebrate the differences which lead many parents to choose to educate their children at home.

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