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**MY HOME, MY SCHOOL, MY ISLAND: HOME EDUCATION IN AUSTRALIA
AND NEW ZEALAND**

Sally Varnham¹

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 the United States, Canada and countries in the European Community, have education legislation which aims to ensure that education is free, available and compulsory to all children generally between the ages of 5 and 15.² 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?

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² There are some variations in these ages between New Zealand and Australian states and territories.

This paper examines the current legal position of home education in Australia and New Zealand. It discusses the reasons why increasing numbers of parents are now choosing to opt their children out of schools and keep them at home. It considers the extent to which the state allows them this choice and exercises control over it.

Introduction

Education began in the home. It then moved out of the home and into a more formal system of schooling in public and private institutions. Nowadays, for increasing numbers of children, school has returned to the home, and their teachers are their parents.

This practice is known variously as home education, home schooling, and even ‘unschooling’ where the focus is on natural or child-led learning. Whatever its emphasis, many explanations have been advanced for the trend. The New Zealand Education Review Authority (ERO), in its 1998 report, “*The Quality of Homeschooling*”,³ 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. Anecdotal evidence indicates that the drive of many parents to keep their children at home is fueled by a desire to insulate them from negative influences and the anti-social behaviour of peers, perceived by many to be a feature of schools today.⁴

Parents who give concerns for their child’s well-being as a reason for choosing to home

³ Report from <<http://www.ero.govt.nz>> at 28 April 2008.

⁴ It is interesting to note that the desire to ‘shield’ their children from negative influences is also given as a strong impetus for many ‘middle class and well-educated’ parents to chose to home school their children in Singapore, where the trend is also reported to be increasing: ‘Home -schooled kids on the rise’ *The Straits Times*, 18 April 2008, H3.

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 culture in a new country. Among the reasons given within the category of 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 a home schooling association in Australia, 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):⁵

... (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

⁵ Terry Harding and Ann Farrell, 'Home Schooling and Legislated Education' 8 *Australia and New Zealand Journal of Law and Education* (2003) 125, 128-129, quoting from T. J. A. Harding, "*Why Australian Christian Academy Families in Queensland Choose to Home School: Implications for Policy Development*" (unpublished thesis, Queensland University of Technology, 1997).

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 the secular government education system.⁶

In the United States the debate which features strongly is the Christian belief in intelligent design, rather than in science and evolution which is currently incorporated in the state schools' curricula. It is reported that: "The American religious Right are increasingly turning to home-schooling, lest their children may be exposed to the evils of sex, drugs or – heaven forbid – Darwin".⁷ 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 1999 33% of parents gave the provision for their children of religious or moral instruction as the most important reason for their decision to home school.⁸ In 2003 the percentage remained constant at 30%.⁹ There, as in New Zealand and Australia, the public school system is secular pursuant to the constitutional church/state divide. Furthermore, 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.

⁶ This is despite the fact that the education legislation of most Australian states and territories allows for the provision of general religious instruction and special religious instruction where a need is demonstrated: for example, *Education Act 1990* (NSW) ss 32-33; and *Education (General Provisions) Act 2006* (Qld) ss 76-80.

⁷ 'The God Curriculum' *The Daily Telegraph Magazine*, UK, 7 April 2007, 28.

⁸ K J Bauman, 'Home Schooling in the United States: Trends and Characteristics' (Working Paper No 53, US Census Bureau, 2003); Bauman K. J. 'Home Schooling in the United States: Trends and Characteristics' (2002) 10 *Education Policy Analysis Archives* 26 <<http://epaa.asu.edu/epaa/v10n26.html>> at 28 April 2008.

⁹ US Department of Education, Institute of Educational Sciences, National Center for Educational Statistics, *Home Schooling in the United States: 2003*, Statistical Analysis Report (2003), <<http://nces.ed.gov/pubs2006/homeschool/parentsreasons.asp>> at 28 April 2008.

In Australia it is difficult to obtain accurate statistics due to the varying state and territory provisions for dispensation from compulsory education and registration for home schooling, and anecdotally, the failure of many home-schooling parents to take any formal action.¹⁰ A study undertaken in Queensland in 2003 showed an increase from 907 in 1996 to 1474 in 2002 of parents who had applied for dispensation from compulsory enrolment for their children.¹¹ Home schooling organizations, from their experience and using Queensland as an example, report an increase in the numbers of children being schooled at home throughout Australia.¹² In New Zealand, the number of children who are being schooled at home increased 22.8% from 1998 to 2007.¹³

This article considers the responsibility for education, and the extent to which the choice to home school is provided for, and controlled, in the education legislation of the different jurisdictions in Australia, and in New Zealand. It also discusses the reasons why increasing numbers of parents, it would seem, are now choosing to educate their children at home.

Education: state or parental responsibility?

Specific reasons aside, it is a fundamental belief in parental responsibility for education which drives the majority of home-schooling parents. Harding¹⁴ cites the US research of

¹⁰ Philip Strange 'How Many Home Educators in Australia?' *Home Education Association Inc* <<http://www.hea.asn.au/resources>> at 28 April 2008.

¹¹ Study from <www.homeschoolaustralia.beverleypaine.com> at 28 April 2008.

¹² See n.10 and n.11 above.

¹³ Statistics from <www.educationcounts.govt.nz/statistics> at 28 April 2008.

¹⁴ See p.2 and n.5 above.

Ray¹⁵ in stating that ‘home educating families share a common belief that the education of children is primarily their responsibility’.¹⁶

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.¹⁷

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 his powers.

The interest of the government in fulfilling this responsibility 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.

¹⁵ B D Ray, *Marching to the Beat of Their Own Drum: A Profile of Home Education Research* (1992).

¹⁶ Terry Harding and Ann Farrell, ‘Home Schooling and Legislated Education’ 8 *Australia and New Zealand Journal of the Law and Education*, (2003) 125, 128.

¹⁷ (1939) AJHR EI, 2-3.

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, arguably thereby imposing on states the duty of providing that education.¹⁸ 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. In Australia the education acts of individual states generally recognize the right of every child to receive an education.¹⁹

The entitlement of each person, and the obligation of the state with regard to education, was affirmed in New Zealand in a case which arose in the context of special education, *The Attorney-General v Daniels*.²⁰ 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

¹⁸ While both New Zealand and Australia have ratified these instruments and such ratification is generally believed to confer a legitimate expectation of adherence (*The Minister of Ethnic Affairs v Teoh* (1995) 128 ALR 353), the extent of this principle was questioned by the High Court of Australia in *Re Minister for Immigration and Multicultural Affairs; Ex Part Lam* (2003) 195 ALR 502.

¹⁹ For example, *Education Act 1990* (NSW) s 4, *School Education Act 1999* (WA) s 3, and *Education Act 2004* (ACT) s 7.

²⁰ [2003] 2 NZLR 742 (Court of Appeal).

to provide an education system. The government discharges its obligation by the provision of a state education system within a legislative framework.²¹ Keith J. in delivering the judgment of the Court said:²²

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 receive an education, accompanied by a state's responsibility to provide it. 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

²¹ 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.

²² *Attorney-General (NZ) v Daniels* [2003] 2 NZLR 742 (Court of Appeal).

control aspect which most troubles many of the parents who are committed to home schooling their children.

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.²³ Government schools are funded by central government. However, in 1989, pursuant to a Government policy known as “Tomorrow’s Schools”, administration of schools was devolved from central government to locally elected boards of trustees. A school board has, subject to the laws of New Zealand, complete discretion to control the management of the school ‘as it thinks fit’, and a school’s principal is vested as the board’s chief executive in relation to that control and management.²⁴ The board of trustees of each school is required to formulate a charter²⁵ of the school’s aims, purposes and objectives and must follow the nationally formulated National Education Guidelines.²⁶ Importantly, in the context of this discussion, a school board must consult with members of the school community before preparing the proposed charter.²⁷ This duty is pursuant to the philosophy behind the *Education Act 1989* (NZ) 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

²³ In the case of state and integrated schools, *Education Act 1989* (NZ) pt XXVII, and in respect of private schools, s 35A of that Act. ‘Integrated schools’ were formerly private schools which now receive significant government funding but retain their ‘special character’ pursuant to the *Private Schools Conditional Integration Act 1975*. Most denominational schools in New Zealand are integrated schools.

²⁴ *Education Act 1989* (NZ) ss 75-76.

²⁵ *Education Act 1989* (NZ) ss 61-64.

²⁶ *Education Act 1989* (NZ) s 60A.

²⁷ *Education Act 1989* (NZ) s 61(3).

government schooling which is seen as appropriate and relevant to each parent. It affords parents the opportunity to become involved in shaping the culture and environment of their local school and thus make it more relevant to them. It could perhaps be assumed that a by-product of this regime may be that more parents would take advantage of this opportunity and decreasing numbers of parents would feel the necessity to home-school. However, this is not the case and the numbers of New Zealand parents who choose to educate their children at home continues to rise.

Home education in New Zealand

All children must be registered in a registered government, non-government or integrated school between the ages of six and sixteen.²⁸ The legislation makes no express provision for home schooling. Parents wishing to home school their children must apply for an exemption from compulsory enrolment and attendance. In order to be granted this exemption the Secretary of Education must be satisfied that the person: '(i) Will be taught at least as regularly and well as in a registered school ...'.²⁹ That there is no definition of 'as well' and 'as regularly' is a matter of concern to home schoolers.³⁰ The onus is on a parent to provide enough information to satisfy the Secretary that this criteria is being met. It is argued that, as home schooling is based primarily on learning from the natural environment, it does not fit easily into the mould of classroom teaching and such a standard is therefore inappropriate.

²⁸ *Education Act 1989* (NZ) s 20.

²⁹ *Education Act 1989* (NZ) s 21.

³⁰ See <<http://www.home.school.nz/homelaw.shtml>> at 28 April 2008.

Home-schoolers 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, home-schoolers argue:³¹

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...

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 endeavour 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.

³¹ See *New Zealand Legal and Administrative Issues*, <<http://www.home.school.nz/homelaw.shtml>> at 28 April 2008.

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. 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.³² There is now specialist home schooling unit within the Ministry of Education. The introduction of this unit was welcomed by home schoolers 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, although a home schooler comments that: ‘The ERO [Education Review Office] appears to be taking a more professional approach to us ...’³³

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 exemption³⁴ was granted are being met. The Certificate of Exemption may be revoked following an unsatisfactory

³² The Education Review Office (ERO), established in 1989 pursuant to the new school administration regime, has the responsibility for review of all compulsory education providers.

³³ See n.31 above.

³⁴ Under s 21 *Education Act 1989* (NZ), see n.29.

ERO report.³⁵ In some cases after revocation ERO will conduct follow-up reviews based on the following criteria:³⁶

- 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.

In its 2001 report, ERO concluded:³⁷

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.

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 in adherence to the philosophy discussed above, that education is a parental not a state

³⁵ 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: *'ERO Reviews of Homeschooled Students'* (March 2001) <<http://www.ero.govt.nz>> at 28 April 2008.

³⁶ Above, 13-14.

³⁷ Above, 14.

responsibility and to accept state funding is to accept state control over what their children are taught and how they are educated. However, this refusal can be academic only as the schooling by those parents is subject to review, whether they accept the government contribution or not.

In New Zealand's constitution the term 'state responsibility' refers to that of central government. The responsibility for the education of Australia's children is that of individual states and territories.

The legal framework for the provision of education 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 arriving with them. Later 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.³⁸ 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,

³⁸ For a comprehensive explanation of the development of formal education in Australia, see Ann Shorten, 'The Legal Context of Australian Education: An Historical Explanation' (1996) 1(1) *Australia and New Zealand Journal of Law and Education* 2.

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. It is of interest that the *Education Act 1990* (NSW) 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:

- (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 principal objects is stated in Section 5 (d) as 'to allow children to be educated at home'. It is curious that, despite the wording in Section 4 (b) (above), the use of the word 'allow' clearly places emphasis on the state's control of education.

The Australian Capital Territory *Education Act 2004* (ACT) 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 wording encourages debate as to whether the intention of this Act is to recognize the partnership of parents and the state in the education of children or whether it goes further, to positively encourage home education.

Home education in Australia

As may be expected from the principles enunciated in their education acts above, the state of New South Wales and the Australian Capital Territory make the most clear and detailed provision for both the registration of and control over home education. Not all states and territories are as specific.

In the Australian Capital Territory, Chapter 5 of the *Education Act 2004* (ACT) begins its express provisions relating to home education, by stating the principles as:³⁹

- (a) parents have the right to choose a suitable education environment for their children;

³⁹ *Education Act 2004* (ACT) s 128.

- (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.

Despite its expansive wording, this part of the Act then provides for system of registration for home education which is strongly regulative.⁴⁰ The conditions for registration for home education are that the parent must provide high-quality education for the child, document the educational opportunities and strategies used, and make available for inspection on request any ‘education programs, materials or other records used for home education.’⁴¹ 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.⁴² Registration for home education may be cancelled if a parent has contravened a condition of home education.⁴³ All these express provisions serve to reinforce the responsibility of the state and state control of education and to position

⁴⁰ *Education Act 2004* (ACT) ss 130-132.

⁴¹ *Education Act 2004* (ACT) s 132.

⁴² *Education Act 2004* (ACT) s 138.

⁴³ *Education Act 2004* (ACT) s 135.

home education as a deviation from the norm rather than as an individual and equally valid choice by parents.

Similarly, in New South Wales, a parent must register a child for home schooling ‘under Division 6 of Part 7 [of the Act] and to receive instruction in accordance with the conditions to which the registration is subject’.⁴⁴ 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.⁴⁵ The information required to be provided by a home-schooling parent was at issue in the case of *Boxx v Aquilina*.⁴⁶ The registration of the plaintiff to home-school her six children had been cancelled by the Department on the basis that she had failed to supply the information it required relating to the educational progress of the children. The plaintiff argued that it should be enough that she advised that her education met the minimum requirements. Fundamentally this argument strikes at state control of education. It relies on the belief that education is a parental responsibility which the state should respect. In refusing the plaintiff’s claim for substantive relief, the court upheld the control of the state over home-schooling registration, reinforcing its authority generally over home-schoolers.

In Western Australia, the *School Education Act 1999* (WA), in similar vein to NSW and ACT, provides for a system of ‘registration’ of home education. It contains corresponding strongly prescriptive provisions. ‘Home educator moderators’ are

⁴⁴ *Education Act 1990* (NSW) s 22. Sections 70 to 81 strictly provide for these conditions.

⁴⁵ *Education Act 1990* (NSW) s 74.

⁴⁶ [2000] NSWSC 166 (15 March 2000).

appointed to evaluate the programmes and the educational progress of children who are being home educated.⁴⁷ Importantly the criteria for such evaluation includes:⁴⁸

- (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.

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:⁴⁹

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

⁴⁷ *School Education Act 1999* (WA) s 50. Such evaluations must be made within three months of the registration, and at least once in every 12 month period: s 51.

⁴⁸ *School Education Act 1999* (WA) s 53.

⁴⁹ Department of Education and Training, Government of Western Australia, *Home Education*, <<http://www.eddept.wa.edu.au/regframe/index.cfm>>, 2, at 28 April 2008.

learning outcomes expected of all students for assessment that is fair and contributes to continued learning.

Tasmania also provides for registration of home educators which may be subject to conditions, and which 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’.⁵⁰

In South Australia 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.⁵¹ Similar to the New Zealand provisions, 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’.⁵² 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’. In common with the New Zealand legislation, a definition of ‘efficient’ or ‘suitable’ is absent. In reality, there is very little difference between ‘exemption’ and ‘registration’ in terms of state control in these jurisdictions.

⁵⁰ *Education Act 1994* (Tas) s 17.

⁵¹ See *Education Act 1972* (SA) s 81A.

⁵² *Education Act* (NT) s 21(1)(b).

The manner in which home education is provided for in education legislation in both Queensland and Victoria has been subject to recent change.

In Queensland the changes are contained in the *Education (General Provisions) Act 2006* (Qld). Within an omnibus of reform, this Act creates a registration requirement for parents wishing to home school their children, in line with the provisions in NSW, ACT and WA. There was little evidence of opposition to this change by home-schoolers.⁵³ The apparent lack of controversy may be because there was, under the previous legislation, as in New Zealand, a significant measure of control exercised by the State Government over home education. This was not the case in the State of Victoria where the shift in focus attracted considerable opposition.

Home education in the State of Victoria –the issues

The previous legislation, the *Education Act 1958* (Vic) made no provision relating to home schooling. The *Community Services Act 1970* (Vic) provided that it was a reasonable excuse for a parent whose child was not attending school that the child is under ‘efficient and regular instruction in some other manner’.⁵⁴ The assumption was that a child not attending school was a truant and the onus was on the parent to prove that they were providing that satisfactory level of schooling at home. In the view of the Victorian Department of Education and Training the previous lack of regulation had many disadvantages, particularly as the only means by which it could test the efficacy of a home schooling situation was to prosecute parents under the truancy provisions. Such a

⁵³ Department of Education and the Arts, Government of Queensland, *Education Laws for the Future*, <<http://education.qld.gov.au/review/index>> at 28 April 2008.

⁵⁴ *Community Services Act 1970* (Vic) s 74C(3)(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*⁵⁵ the Magistrate stated that in his view:

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.

This view is shared by the Victorian Minister of Education responsible for the changes who believes that her ministerial responsibility dictates that she ensure that each child in the State receives a quality education and 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.⁵⁶ 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 legislation was introduced in response to this policy. The *Education and Training Reform Act 2006* (Vic) which came into effect on 1 July 2007, created a new body called the Victorian Registration and Qualifications Authority which is charged with ensuring the accountability of all education providers for the quality of education. While home

⁵⁵ (Unreported, Benalla Magistrates Court, Magistrate S M Cosgriff, 11th October 1990); cited in *Education and Training Reform Bill – Home Schooling Consultation*, <<http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>>, 2, at 28 April 2008.

⁵⁶ *Education and Training Reform Bill – Home Schooling Consultation*, <<http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>>, 3, at 28 April 2008.

schooling parents are now required to register to educate their children, the approach to review of home educators is, on the face of it, softer than in other states. Instead of being subject to regular review, home schooling parents are required to present a yearly statutory declaration by which they 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 are not be required to teach curriculum. However, the Ministry states that:⁵⁷

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 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 in the Act by the provision that Authority personnel are prohibited from visiting the residences of home schoolers without their consent.⁵⁸

In Victoria the changes, when proposed, served to focus debate on the question of where the responsibility lies for education. In the words of home schooler Terry Harding,

⁵⁷ *Education and Training Reform Bill – Home Schooling Consultation*, <<http://www.det.vic.gov.au/det/resources/edtrainreform-homeschooling>>, 8, at 28 April 2008.

⁵⁸ *Education and Training Reform Act 2006* (Vic), Clause 5.8.4.1(b).

principal of Australia's largest home schooling association, the Australian Christian Academy:⁵⁹

Governments are good at running schools and schooling. The Victorian Government has no experience of running home education, nor 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.

It could be argued that the changes demonstrate an attempt by the Government to address this criticism. The provisions provide a mechanism for government to have more ready access to home schoolers and their programmes, thereby increasing its knowledge and understanding of this type of education. It is not seen as that by the people most concerned. Rather it is viewed as an imposition of government control over an area of individual responsibility.

Conclusion

Evidence suggests that the home education of children is gaining in popularity. Many reasons are 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

⁵⁹ Home School Legal Defense Association, *Homeschooling: Don't 'Fix' What Isn't Broken*, <<http://www/hsllda.org/hs/international/Australia/>> at 28 April 2008.

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. There is not, as yet in Australia or New Zealand, evidence that the trend is being enhanced by the strong science versus religion influence led by the 'intelligent design' belief in the United States.

The education legislation of New Zealand and of each state and territory of Australia essentially provides 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, 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. There are varying standards of strictness in terms of review of home education, from the yearly statutory declaration, with review only on complaint (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, Western Australia, Victoria and Queensland). While this move demonstrates a much greater acceptance of home education as a legitimate choice for parents, it reinforces state control by the imposition of the conditions under which a parent may become registered, and may continue to be registered, to home school.

The argument for the implementation of policy requiring the formal registration and review of home schooling is that the state has an overriding 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.⁶⁰ 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. The question raised by many home schoolers however is whether this recognition goes far enough.

⁶⁰ The latter are found in New Zealand. Integrated schools are former private schools which have become part of the state system. However, they retain their special character by observing a particular philosophical or religious belief in their daily programmes, Ministry of Education, Government of New Zealand, *Schooling in New Zealand- A Guide*, <<http://www.minedu.govt.nz/index.cfm?layout=document&documentid=6169&indexid=1072&goto=00-02>> at 25 May 2008.

It is the state's argument that its responsibility for education must extend to an assurance that that education is of a sufficiently high quality, regardless of by whom it is provided. With increasing numbers of parents choosing to educate their children at home, it is seen as ever more important that the government has mechanisms for ensuring that each child is receiving such an education. All schools, whether they are government, non-government or alternative, are subject to review to ensure the maintenance of quality. This is also as it should be. It follows then that, for the well-being of all children, all parents who home school should perhaps be prepared to acknowledge and accept the need for such review. Equally important however is the argument 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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