

INQUIRY INTO HOME SCHOOLING

Organisation: Home School Legal Defense Association

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August 7, 2014

VIA ELECTRONIC SUBMISSION

The Director
Select Committee on Home Schooling
Parliament House
Macquarie Street,
Sydney, NSW 2000.

Re: *Inquiry Into Homeschooling*

Dear Sirs or Madams,

I am writing to you to express our interest in the inquiry on homeschooling being conducted by your parliamentary body. I offer this document and my own personal testimony as to the regulatory aspects of homeschooling and the successes and benefits associated therewith if it would be of any benefit to you and your colleagues.

INTRODUCTION

By way of introduction, the Home School Legal Defense Association is an international organization located in the United States with our headquarters in the Washington, DC area. Our mission is to protect the right of parents to direct the

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education of their children and to advance the cause of homeschooling. Presently, we have more than 81,000 member families in all 55 of the United States and its territories and in 36 countries, including New South Wales and other Australian states.

HOMESCHOOLING - A GROWING GLOBAL MOVEMENT

Homeschooling is a rapidly growing movement globally in which parents choose to direct the education of their children. This has proven to be a positive educational option that produces academically successful, well-developed, socialized adults. In the United States alone there are more than two million students who are currently homeschooled. Countries such as Canada, France, South Africa, the United Kingdom, Mexico, and Russia boast significant numbers of homeschooled students, ranging from tens to hundreds of thousands. National homeschool organizations similar to ours exist in many other countries, including: HSLDA of Canada, Les Enfants d'Abord in France, Pestalozzi Trust Legal Defence in South Africa, and the Home Service in the United Kingdom and Family Policy Russia.

As homeschooling has increased in popularity, it has been the subject of increasing social research. Numerous studies demonstrate that homeschooled students become responsible citizens who are productive members of society. Research has

indicated that homeschooled children are more involved in their community, civics, and higher education than students from public or private school settings. Studies have also concluded that students schooled at home develop into well-rounded and socially integrated adults.¹

Homeschooling also produces academically successful students. Educational achievement tests document that homeschooled students attain higher scores than public school students. Homeschoolers achieve, on average, between 15 and 30 percentile points above public school averages. A number of studies reveal that this is true for all grade levels and subjects. Research also shows there is no correlation between high test scores and government regulation. For a comprehensive overview of the research on homeschooling in America, I invite you to review Joseph Murphy's authoritative work on homeschooling. Dr. Murphy is the Associate Dean of the Peabody School of Education at Vanderbilt University.² I also enclose an amicus brief filed by my organization in court further detailing home education as a beneficial form of education.

HOMESCHOOLING IN NEW SOUTH WALES

Homeschooling in New South Wales is provided for in Section 7 of the Compulsory Attendance Clause in the Education Act of 1990.³ The attendance clause places the duty of providing for the child's education upon the parent.

However, the clause requires that a child be either enrolled at a government school or a registered non-government school or “to be registered for homeschooling under Part 7 and to receive instruction in accordance with the conditions to which the registration is subject.”⁴

Section 7 requires a parent to apply in writing to the Minister of Education for registration of the child for homeschooling. This request initiates a bureaucratic registration process where the Minister appears to determine whether or not a parent is suitable to teach their own children. Under the Act, the minister “obtains advice on the application from an authorized party” which includes an inspector.⁵ The Minister of Education delegated this responsibility to the Board of Studies, Teaching and Educational Standards. (BOSTES). The current procedure BOSTES requires homeschooling parents to comply with is outlined in the application for registration. The registration form requires parents to be in compliance with the requirements for homeschooling contained in the Registration for Home Schooling in NSW – Information package. This package requires parents to have “records of the child’s previous educational history and attainment, an educational program based on the relevant BOSTES syllabuses, a method for recording learning activities, a method for recording student achievement and progress, and sufficient resources and a suitable learning environment.”⁶

These requirements are invasive, overly burdensome and interfere with parents fundamental rights to direct their children's education. Not only must parents complete extensive paperwork to apply for registration and submit documentation, they also must submit to annual home visits and an investigation as to whether they have "sufficient resources and a suitable learning environment."⁷ From a human rights perspective this constitutes a significant burden on the personal privacy and rights of families to be free from unnecessary government interference.⁸

I attach for the committee's benefit a chapter of a book I wrote that analyzes homeschool regulations around the world. Based on the categories of the regulations reviewed, New South Wales would be in one of the more highly restrictive categories and when compared to most jurisdictions, especially English speaking ones with a foundation of English Common law in their legal history, New South Wales requirements are excessively intrusive and burdensome. It is no surprise that thousands of homeschooling parents choose not to comply with these regulations.

STATE POWER AND PARENTAL RIGHTS IN EDUCATION

For further reference I include a more lengthy analysis of this subject as an addendum entitled "A Battleground? Parent's Rights and State Power in the Modern Human Rights System".

Generally speaking, however, the right to education is recognized in virtually every human rights instrument in some way either directly as a right or implicitly in describing how education is to be respected, protected or fulfilled. Education is a right that is also explicitly qualified with reference made to the important role of the family and parents in the education of children.

The right to education is unique in that it is the only right that is referred to, at least with respect to children, as compulsory for certain ages. In Article 26 of the UDHR the right to education is recognized along with its purpose and qualification with respect to the rights of parents. The right to education is also explicit in both the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the International Covenant on Civil and Political Rights (“ICCPR”) and virtually all other human rights treaties in some way. Every other regional human rights framework also recognizes the right to education. Australia is a party to many, if not all, of these international treaties as well as some regional ones.⁹

Where the UDHR reserves the decision making authority of parents relative to others in Article 26(3) noting that “[p]arents have a prior right to choose the kind of education that shall be given to their children,”¹⁰ the ICESCR explicitly recognizes the liberty of parents to choose non-public schools and proscribes the state from interfering with the liberty of “individuals and bodies to establish and direct educational institutions...” although the state’s authority is admitted to

prescribe certain minimum standards.^{11,12} The ICCPR does not recognize education as a “right” but in Article 18(4) protects a parent’s decision making authority by proscribing state interference with a parent ensuring that a child’s religious or moral education conforms with the parent’s own religious or philosophical convictions. Article 4(2) makes this right non-derogable.

Selected references to Major Treaties are excerpted below:

The Universal Declaration of Human Rights (1948):

Parents have a prior right to choose the kind of education that shall be given to their children (Article 26.3).

The European Convention on Human Rights (1952):

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (Protocol 1, Article 2).

The International Covenant on Economic, Social and Cultural Rights (1976) and
International Covenant on Civil and Political Rights (1976):

States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and

to ensure the religious and moral education of their children in conformity with their own convictions (Article 10.1 and 13.3).

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions (Article 18.4).

Charter of Fundamental Rights of the European Union (2000):

The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right (Article 14.3).

In addition, a 2006 report by United Nation's Special Rapporteur Vernor Munoz confirms a parent's right to direct the education of his or her children:

[A]ccording to reports received, it is possible that, in some [German] Länder, education is understood exclusively to mean school attendance. Even though the Special Rapporteur is a strong advocate of public, free and compulsory education, it should be noted that education may not be reduced to mere school attendance and that educational processes should be strengthened to ensure that they always and primarily serve the best interests of the child. Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. In this context, the Special Rapporteur received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children.

I also point you to the Berlin Declaration, available online at www.theberlindeclaration.org, as a source for more references in the international human rights framework.

ANALYSIS AND RECOMMENDATIONS

The current regulatory framework in place in New South Wales is unnecessarily burdensome, intrusive and discretionary. It places undue and unjustified bureaucratic burden on parents who wish to exercise their basic rights to determine how their children are educated.

In the United States, for example, home visits have been declared expressly unconstitutional and there is no jurisdiction in which they are used in connection with home education. The majority of jurisdictions in the United States require a simple annual or one time notification that a parent is exercising their right to homeschool. In a minority of jurisdictions, annual or periodic assessments are used by some states to determine if minimum educational progress is being attained. Such assessments include standardized tests, progress reports and portfolio reviews – usually at the election of the parent. There are no requirements of any kind in most countries that regulate home education that parents use any

particular curriculum. While many states do require that certain subjects be taught these vary from state to state and are general in prescription. The details of scope, sequence, method and process are left to parents to determine. For more detail on the various regulatory regimes around the world please refer to the attached book chapter.

I hope that this submission is found helpful and in conclusion I urge the Legislative Council Select Committee on Home Schooling to consider significantly reducing the regulatory burden on home educating parents.

If you have any questions or if I may be of further service please do not hesitate to call me at

Very truly yours,

Michael P. Donnelly

MPD/sco

Enclosed:

- *Amicus Curiae* Rocha v. Rocha
- "Homeschooling" *Balancing Freedom, Autonomy, and Accountability in Education*
- A Battleground? Parent's Rights and State Power in the Modern Human Rights System

¹ Richard G. Medlin, Homeschooled Children's Social Skills, Home School Researcher 17(1), 1-8, (2006).

² Downloadable book on Kindle here: http://www.amazon.com/Homeschooling-America-Capturing-Assessing-Movement-ebook/dp/B00AQNEWO6/ref=sr_1_1_bnp_1_kin?ie=UTF8&qid=1386013402&sr=8-1&keywords=homeschooling+in+america+murphy.

³ Parliament of New South Wales, *Education Act of 1990 Act 8*, Part 5-Section 22.

⁴ Ibid.

⁵ Ibid, Section 70.

⁶ Board of Studies Teaching & Educational Standards, *Form 1 Application for Initial Registration (or Exemption from Registration) for Home Schooling*.

⁷ Board of Studies Teaching & Educational Standards, *Registration for Home Schooling Authorized Persons Handbook*, 7.

⁸ Board of Studies Teaching & Educational Standards, *Form 2 Application for Renewal of Registration (or Exemption from Registration) for Home Schooling*.

⁹ [http://www.loc.gov/law/help/child-rights/australia.php#Implementation of International Rights of the Child](http://www.loc.gov/law/help/child-rights/australia.php#Implementation%20of%20International%20Rights%20of%20the%20Child)

¹⁰ UDHR Article 26(1).

¹¹ UDHR 26(3) and ICESCR 13(3).

¹² ICESCR 13(4).