

## **INQUIRY INTO HOME SCHOOLING**

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# LEGISLATIVE COUNCIL SELECT COMMITTEE ON HOME SCHOOLING INQUIRY INTO HOME SCHOOLING

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## Introduction

The education of children has been compulsory in NSW for over 100 years, reflecting the vital role that education plays in children's overall development and wellbeing. Children engaged in education are more likely to learn, achieve educational success, and have increased career and life options. They are also more likely to be positive and active contributors to society.

The *Education Act 1990* defines the responsibilities for parents regarding compulsory schooling and provides options for how those responsibilities can be met. Parents can choose to enrol their child in a government or registered non-government school, or seek registration with the Board of Studies, Teaching and Educational Standards (BOSTES) for home schooling.

Some students in NSW Government schools are enrolled in distance education schools. Distance education schools provide a means for students to access the curriculum where regular school enrolment may not be available, or for a range of reasons, not accessible. This is different from home schooling. In distance education the school and teacher are responsible for developing, implementing and evaluating student learning programs. A parent or other supervisor supports the child to complete the learning programs developed by the school. Distance education schools maintain a register of interactions that take place between the student and the teacher and use these interactions to assess satisfactory attendance.

## The importance of education

In recent years there has been significant government and community focus on engagement with education. This focus has been in recognition of the critical role that education plays in a child's successful development. School attendance has been the subject of substantial reform in conjunction with child protection reforms within NSW.

The report of the *Special Commission of Inquiry into Child Protection Services in NSW* (The Hon James Wood) released in November 2008 recognised the importance of compulsory schooling. In Volume 1 of the report (4.134) Commissioner Wood states:

*The importance of participation in school as a protective factor which mitigates against extreme risk taking is reinforced by the Child Death Review Team study. The importance of the school as a site for education about help seeking and problem solving is also clear.*

In Volume 2 of the report (7.63) Commissioner Wood further states:

*Research suggests that 'school connectedness' is an important protective factor for behavioural, emotional and school related problems and there is evidence that multi-component interventions that specifically target school connectedness improve children's academic, behavioural and psychological outcomes.*

The NSW Government's response to the *Special Commission of Inquiry into Child Protection Services in NSW, Keep Them Safe*, is the NSW Government's five-year (2009-14) action plan to re-shape the way family and community services are delivered in NSW to improve the safety, welfare, and wellbeing of children and young people. The goal of Keep Them Safe is that "all children in NSW are healthy, happy and safe, and grow up belonging in families and communities where they have opportunities to reach their full potential". To support this goal, compulsory schooling and co-ordinated service provision related to a child's safety, welfare or wellbeing were included as key aspects of the reforms.

The NSW Ombudsman has been a strong advocate for compulsory schooling and has raised concerns about the impact on children, where they are disengaged from education. In the 2011 Special Report to Parliament *Keep Them Safe?* the Ombudsman commented (page 15):

*Engagement in the school system is essential to a young person's overall development and wellbeing. For several years, we have examined issues relating to school absenteeism in a range of child protection contexts, and have observed that children who miss substantial periods of school are usually also exposed to other significant risks.*

*Our submission to the Wood Inquiry on mandatory reporting reinforced that children who experience significant interruptions to their schooling are not only being deprived of a fundamental right relating to their development, they also lose the social support network and structure that the school community can provide.*

The child protection system within NSW, and processes in place for managing school attendance within the Department of Education and Communities (the Department), recognise the importance of educational engagement. Approaches have been informed by the outcomes of the *Special Commission of Inquiry into Child Protection Services in NSW* and the work of the NSW Ombudsman.

### **Education: the legislative context**

The *Education Act 1990* (the Act) sets out the requirements for education within NSW. In particular, Section 22 of the Act establishes that it is the duty of the parent<sup>1</sup> of a child of compulsory school-age to cause the child:

- a) to be enrolled at, and to attend, a government school or a registered non-government school, or
- b) to be registered for home schooling and to receive instructions in accordance with the conditions to which registration is subject.

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<sup>1</sup> In the *Education Act 1990* "parent" includes a guardian or other person having custody or care of a child.

Section 23 of the Act establishes that parents failing to comply with those requirements are guilty of an offence, unless they can demonstrate they have a defence. The Department may take legal action on behalf of the Minister for Education where parents fail to meet their obligations.

In addition to the requirements of the Act, the *Children and Young Persons (Care and Protection) Act, 1998* (the Care Act) was amended in 2010, recognising the importance of education for a child's safety, welfare and wellbeing. The amendments recognise that educational neglect is a factor that may place a child at risk of significant harm. In particular, section 23 (b) 1) of the Care Act sets out that a child may be at risk of significant harm where, in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*, the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act.

To best respond to and support children and families who are at risk, including risk of educational neglect, the Care Act was also amended to broaden the provisions for information exchange between agencies ('prescribed bodies') and also sets out a requirement for prescribed bodies to co-ordinate service delivery and decision making to effectively meet their responsibilities for the safety, welfare or wellbeing of children and young people. Information sharing and service co-ordination with other agencies who may already be working with a family, or through referral processes, has enabled the Department to provide better support where issues within the family may be impacting on children engaging with education.

### **Support for students and families engaging in home schooling**

It is important that all children are supported to receive an education as allowed by the *Education Act 1990*. For children and families with additional needs, it is most important that these are considered when families are seeking to access home schooling. For some vulnerable students, home schooling may not offer the same opportunities for learning, support or collaborative interagency service provision, as is available for students who are enrolled in a school. In the same way that the personal learning and support needs of every student enrolled in a school are identified and considered, the needs of students who are seeking to be registered (or are already registered for home schooling) also need to be considered.

Parents or other caregivers who chose to home school should be supported to provide a safe and supportive learning environment, that meets the child's learning and wellbeing needs. Where this cannot occur, home schooling is unlikely to be in the best interests of the child.

Schools provide opportunities for comparative assessment and monitoring of students' learning and wellbeing amongst their cohort. It is more difficult for students to receive this when they are home schooled. Home schooling systems that enable student learning and wellbeing to be monitored and supported may enhance the likelihood of educational success. It is most important that there are rigorous systems in place for home schooling registration, and monitoring, and that the learning and wellbeing needs of children engaged in home schooling are of primary concern.

Research suggests that the quality of teaching is the single most important influence on student performance. Within NSW Government schools there are systems in place that

help to support the development and maintenance of teacher professional practice. This helps to ensure a quality learning experience for all students. It is important that parents or other caregivers, who are providing home schooling for their children, have the necessary ability and support to meet the child's learning needs, and that this is considered when registration for home schooling is sought.

### **Children not receiving compulsory schooling**

From time to time the Department is advised that a child or young person may not be receiving compulsory schooling, either through school enrolment or through registration for home schooling. In these circumstances the Department (via a Home School Liaison Officer) will investigate, with the goal of ensuring that the child is receiving compulsory schooling. In undertaking this investigation the Department ensures that the child's parent is aware of their obligations to help ensure that their child receives an education (as allowed under the Act). The Department will support the family to have the child enrolled in a school or provide information and contacts for the parent to apply for home schooling.

Where a parent is unable or unwilling to ensure their child receives compulsory schooling the Department may initiate further action. This may include:

- a compulsory schooling conference to identify and address any issues that may be preventing the child from receiving compulsory schooling
- an application to the Children's Court for a Compulsory Schooling Order
- commencing prosecution in the Local Court.

During the Department's processes for responding to children who are not receiving compulsory schooling, there is significant opportunity for parents to comply with their responsibilities (and where needed receive support to comply with their responsibilities) to ensure their child receives an education. If parents begin to comply with their legal responsibilities during this time legal action is withdrawn.

The Department only commences legal actions for non-compliance with compulsory schooling with the aim of ensuring that children receive an appropriate education. The Department does not wish to penalise parents. Negotiations with parents take place during each court case to help them avoid legal consequences such as a conviction and fine. In cases where a parent has not registered a child for home schooling the courts generally prefer to give parents time to register for home schooling rather than proceeding straight to a decision about the matter.

There are provisions in the Act for a parent of a child wanting the child to be home schooled to give notice that the parent conscientiously objects to registration under the Act on religious grounds. The conscientious objection may be accepted by the Board of Studies, Teaching and Educational Standards (BOSTES) if there is satisfactory evidence that registration would be granted if an application for registration had been made. If the objection is accepted, a certificate of exemption from registration is issued by BOSTES.

While the Department receives reports of children who are not registered for home schooling there is no way of determining the number of unregistered home schoolers in NSW. Reports about children not receiving compulsory schooling may be received from members of the community, another agency, or BOSTES when registration is declined.

BOSTES processes require the Department to be informed where registration for home schooling is declined. In those circumstances the Department will make contact with the family (through a home school liaison officer) and support the family to enrol the child in a school.

Currently there is no system which registers or tracks the movement of children within Australia and across schooling systems. This means there is no reliable way of determining the number of children who are not receiving a compulsory education (including unregistered home schoolers), both in NSW and across Australia.

### **Conclusion**

Home schooling is a legitimate and well established pathway for children to receive an education. Given the importance of education for a child's development and wellbeing, and also given Government and community focus on educational engagement and the child protection and wellbeing system, it is most important that there are rigorous systems in place for home schooling registration and monitoring. These systems need to ensure that the learning and wellbeing needs of children engaged in home schooling are of primary concern. Any measure that diminishes registration requirements for home schooling is not supported. Measures that strengthen opportunities to ensure the learning and wellbeing needs of children registered for home schooling are met, and which take action to reduce the number of students not receiving compulsory schooling, or not having these needs met, are most important.