Update on the Education Bill for Tasmanian Home educators:

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A) Update on the progress of the Bill:

Did you know? The Education Bill has been revised and the new version was tabled in the Tasmanian Parliament on 21st September.

You can find it on this link:

There are problems with this Bill from a home education perspective, but there is still the possibility of getting changes made so that any negative impact on home educators will be minimized. The Bill will be debated in the lower house of Parliament (House of Assembly) just after the school holidays and since the government has the majority here it is likely to pass through the lower house fairly quickly. The next step after that is for it to be debated in the upper house (Legislative Council) which is mostly made up of independents and the Bill will be debated there in great detail, possibly being sent to a committee level process for extra scrutiny. Changes can, and hopefully will, be made to the Bill in the Legislative Council via amendments proposed by Members of the Legislative Council. The MLCs need to understand what home educators want so that they can propose the appropriate amendments. We need your help to make this happen.
B) Key Factors that will shape home educators’ experience of the proposed legislation:

Whilst there are many aspects of the Bill that are of concern to home educators and which individuals may wish to take up with their local MLCs (Members of the Legislative Council), the HEA considers that the five most significant factors that will shape home educators’ experience of the registration system and general education provisions proposed in this legislation are:

1. **How the Principles of the Act frame the role of the parents in regard to the education of their children**

2. **Whether the Bill can be amended to specifically address the needs of home educated children with disabilities - especially in regard to ensuring that these children have an advocate on THEAC and that they be guaranteed equitable access to funding, resources and specialist services through the Department of Education and other agencies on par with their school-based peers.**

3. **The new Registrar’s ability to understand home education and to make determinations appropriate to a non-institutional learning paradigm.**

4. **The depth of home education experience and knowledge of the diverse needs of home educated children held by the monitoring/registration officers who will be conducting monitoring visits, writing assessment reports and making recommendations to the Registrar.**

5. **The degree to which the Bill can be amended to reflect the fact that home education is not limited in location to the family home, nor limited in time to school hours, nor limited in provision to the registered parent(s) but that home education embraces a diverse range of learning activities facilitated by the parents from a home base, outside of the school system.**
It is inevitable that a high degree of *subjectivity* will be involved in the assessments made by the registration officers and Registrar about such things as:

- How best to honor the needs of children with disabilities so that their programs are able to be designed and assessed in a way most appropriate to their individual situations.
- Whether a home education program is being provided to a “sufficient extent”
- Whether a determination to deny (or approve) registration is really in the “best interests of the child”
- Whether the home education program sufficiently fulfils the standards laid down in regulations.
- Whether the home educator is capable of providing the program to the required standard and extent.

It is therefore imperative that the assessments made by the Registrar and registration officers are based on sound knowledge that is informed by an *appropriate educational framework*. In order to appropriately assess home education programs, these officers must be able to think outside the parameters of conventional institutionalized learning and understand that home education is not a mini version of school, but a completely different organism.
C) **Key Amendments required:**

Members of the HEA and many other home educators have spent the last few months lobbying for changes to the proposed legislation. The government has made some concessions such as requiring that the majority of THEAC members are selected for their experience or skills in relation to home education, and expanding the range of matters on which the Registrar must “seek and consider” THEAC’s advice. However, the Minister’s office has been intractably opposed to the HEA’s recommendation to establish an independent statutory body for the regulation of home education. Whilst we should continue to let the MLCs know that an independent registration body is the most appropriate way to regulate home education, we should also draw their attention to alternative more achievable amendments that they can make if they are unwilling to force the government to rewrite the whole Bill.

Section E of this update provides a detailed look at the sections of the Bill which are of most relevance to home educators and you are encouraged to examine these for yourselves.

At this point in time, the HEA suggests that the six most realistic and crucial amendments home educators can ask the MLCs to propose are that:

1. Section 4 (b) in the Principles of the Act be reworded to acknowledge that the education of children is primarily a parental responsibility that may be delegated, but which does not have to be delegated.

2. A separate Registrar be appointed for home education and that the appointee must demonstrate a good understanding of alternative or non-institutionalized education and, preferably, have experience in home education.

3. a) The Bill should stipulate that separate registration officers should be appointed for the assessment of home education programs rather than having the same registration officers assessing both home education programs and non-government schools.

   b) In the selection of registration officers for home education the most preferred requirement should be extensive experience in the provision of home education and an understanding of the diverse needs of home educated children. [This could be achieved by ensuring that the position descriptions are advertised through the home education community and, particularly to those who may be near the end of their home education journey as well as to former long term home educators. The latter groups are more likely to be available for the role.]

4. Section 67 and Section 87 (3a and 3b) be reworded to acknowledge the fact that home education occurs in multiple locations not limited to the home premises and often
includes involvement in activities and programs that are not directly imparted by the parent. Also, the definitions of home education and home educator in Section 5 of the Bill should be re-written to clarify that “providing” home education means that the parent is the facilitator of the child’s learning, and that whilst this may occur through the parent’s direct instruction, it also occurs when the parent supports the child’s self-directed learning and when the parent provides access to activities and programs run by, or in collaboration with, other people.

**A suggested definition of home education is:** home education is the facilitation of learning through an approved home education program by the home educator from a home base, but is not limited to the home address nor restricted to the operational hours of school and can include tuition, mentoring and participation in activities provided by others in the community.

**A suggested definition of home educator is:** a parent named in an approved home education program as a parent who provides or facilitates home education for his or her child under that program.

5. The Bill should guarantee that home educated children with disabilities have access to resources, specialist support services and any relevant additional needs funding through the Department of Education and other agencies on an equitable basis with their school-going peers.

6. Section 241 of the Bill should be amended to ensure that the Tasmanian Home Education Advisory Council, in addition to having a majority of home educators in its membership, should also include an appointee (from the non-government sector) to represent families living with disabilities, or at least someone with a very good understanding of the Disabilities Discrimination Act 1992 and Disabilities Standards for Education 2005 and other relevant legislation.

Individual home educators are also encouraged to suggest amendments to the sections of the Bill that are of most concern to their family.
D) What home educators can do right now:

1. Email your local MLCs as well as opposition MPs (Labor and Greens) and explain your concerns about the Education Bill.

- Re-iterate that the most appropriate regulatory model for home education would involve the establishment of an independent statutory body that:
  - (importantly) has the agency to employ its own (experienced) monitoring officers and other staff as required, and
  - is governed by a board made up of:
    - a majority of home educators
    - a disabilities advocate
    - no more than one DoE appointee
    - a salaried executive director (or “registrar”) with a good understanding of non-institutionalized learning to manage the administrative details.

- Acknowledge that this would require a major re-writing of the Bill and suggest that if the MLCs are unwilling to force the government to do a major re-write, then home educators want, at the very least:
  - a separate person appointed as Registrar specifically for home education
  - separate registration officers for home education who are not also tasked with assessing non-government schools as is currently planned
  - the Registrar and registration/monitoring officers to be selected on the basis of home education experience and understanding of the diverse needs of home educated children
  - the Bill to recognize that the practice of home education is not limited to the home address, nor to school hours, nor to only what is taught by the parent. (Demonstrate this with examples from your own experience)
  - the Bill to guarantee that home educated children with disabilities be able to access support, resources, specialist services and funding for additional needs through the Department of Education and other agencies on an equitable basis with their school based peers.
  - that Section 241 be amended to ensure that home educated children with disabilities have an advocate on the Tasmanian Home Education Advisory Council (THEAC).
Request that the MLCs propose amendments to other aspects of the Bill which most concern your family. You may also want to feed back to the HEA what parts of the Bill are of chief concern to you so that the HEA can more effectively advocate on behalf of its members.

(Email: admin@hea.edu.au or,  
post to: Home Education Association, Inc., PO Box 245, Petersham, NSW 2049)

Contact details for the Members of the Legislative Council are attached.

2. Make an appointment to visit your local MLCs. Face-to-face connection is more powerful than email contact. Team up with another home educator from your area when you call on the MLCs. Sometimes the MLC will even come to you.

Help the MLCs understand why the amendments you are requesting are imperative to the effective and appropriate regulation of home education.

Many MLCs have had minimal contact from home educators so far. Quite a few still do not have any understanding of how home education works and may believe that home education is just like doing school at home, which is not the case for many home educating families. Your job will be to showcase how home education works for you and your home-educating friends. If the MLCs comprehend that home education is non-institutionalized learning, that it is not confined solely to the home and that it is very different from school, they may be more willing to propose or support the amendments we are requesting.

- Follow up your visit with an email summarizing your conversation with the MLC and re-state your suggested amendments to the Bill.

- Stay in touch with your local MLCs. Share with them any good news or other interest stories relating to home education that you hear about (especially local stories).

3. Join the rally against the Education Bill at 12pm on Saturday 15 October, Parliament Lawns. The rally has been organized by Tasmanians Say No to a Lower School Starting Age who welcome participation from all groups opposed to any aspects of the Education Bill. Make a placard or banner in support of home education. (For example, “Home Educators demand a separate regulatory body” or “Home educators ask for APPROPRIATE regulation”)

4. Write letters to the Editors of the following Tasmanian newspapers explaining your concerns with the Education Bill and emphasizing the points outlined above.

E) Sections of the Bill that are of most relevance to home educators

1. In the Principles that form the basis of the Act, Section 4 (b) it says: “that the State recognizes the role and importance of a child’s parents in the education of their child”, but doesn’t clarify what this role is. The Bill stops short of acknowledging that education of children is primarily a parental responsibility that may (not must) be delegated”.

The principles of the NSW Education Act are actually a lot better than this and include the statement that “the education of a child is primarily the responsibility of the child’s parents”.

2. The Bill proposes that home education be regulated by the new statutory office of Registrar, Education.

The Registrar is technically independent of the Department of Education, which means that the Secretary of the DoE cannot give instructions to the Registrar. However, the Registrar will be guided by instructions from the Minister for Education and Training.

The Registrar will have 3 roles:
1. Registering non-government schools (s223)
2. Responding to student absenteeism from schools (via mediation and/or prosecution processes) (s222)
3. Overseeing the monitoring and registration of home educating families (s224)

The HEA is of the view that the roles of keeping children in school and overseeing the registration of non-government schools will conflict with the role of facilitating home education. The triple functions of the Registrar also mean that whomever is appointed is likely to have extensive experience of institutional schooling and processes and no experience of home education. The focus of the Registrar on facilitating institutional schooling along with a lack of understanding and expertise of home education makes it extremely likely that the Registrar will apply an institutional schooling mindset to their management of home education.

3. The Registrar has the power to:

- Approve a parent’s application to home educate [s69]
- Approve or deny a home educator’s request to amend their own program [s73]
- Impose amendments on a family’s home education program [s76]
- order more frequent monitoring/ongoing assessment of a family’s home education program [s75] (particularly where conditions have been placed on a home education program)
- impose conditions [s71] on a home education program
- refuse an application to home educate if the Registrar is not satisfied that the proposed home education program meets the required standards. [s69(2),(5)]
• revoke the registration/approval of a home education program if the Registrar believes it to be in the child's best interests or if the Registrar believes that the home education program is not being provided to a sufficient extent or if the program no longer satisfies the standards for the assessment of home education programs. Registration can also be revoked if the home educator breaches any conditions applied to their registration or contravenes the Education Act in any other way. [s77]

Note 1: The Registrar may (at their discretion) refuse to approve a proposed home education program if the child or youth has been absent, without authorization, from attendance at a school or an approved learning program, or a combination of both, for more than 20 days during the period of 12 months immediately preceding the application to home educate. [s69(6)] Advice obtained from the Department of Education staff who were involved in drafting the Bill has clarified that “unexplained” or “unauthorized” absences refer to those times when the parent has not phoned, emailed or otherwise notified the school about why the child was absent, whether for illness or other reason. Usually, in these cases, the school tries to phone the parent (many times) to find out where the child is.

Note 2: A home educator who has previously had their approval to home educate revoked because the Registrar deemed that the home educator either failed to provide the program to a “sufficient extent” or that the home educator did not abide by the conditions imposed on their home education program, may reapply to home educate. However, the Registrar may take the home educator's previous “failure” into account in deciding whether to approve the home educator’s re-application. The home educator may need to convince the Registrar that they are in a better position to satisfy the requirements for registration the second time around.[s78]

Note 3: The Registrar will be involved in the selection and management of registration officers and so will be able to influence the experience profile of registration officers and the policies that they must follow.

4. The Minister may issue Ministerial instructions which the Registrar and Registration officers must take into account when carrying out assessments of home education programs, particularly in determining if a home educated child or youth has had their home education program provided to a “sufficient extent”. [s75(8), s76(8), s77(2), s87(2), s91(3), s93(3)]

5. Registration/monitoring officers will be employed by the Department of Education [s228], but will report to the Registrar.
   - The already existing monitoring officers ceased to be THEAC employees in mid-September 2016. Since that time they have been employed by the new regulatory support unit in the Department of Education.
   - Regardless of the new legislation, THEAC could not continue to employ the monitoring officers because advisory bodies such as THEAC do not actually have the authority in law to employ staff. The fact that THEAC has been doing so for many years is an anomaly that only came to light during the period of the
Education Review. The state government was then legally bound to find another way of employing monitoring officers.
- The government was unwilling to follow the HEA’s recommendation to establish an independent regulatory body governed by a board of (mostly) home educators and with the agency to employ its own experienced monitoring officers.
- The Bill no longer specifies the requirement for an educational qualification for Monitoring officers. As the monitoring/registration officers are now state service employees, their position descriptions (including employment criteria) are required to be defined in the Department of Education “statements of duty” (not in the regulations).
- The government’s intention is that the same registration officers will be required to do the registration assessments on non-government schools as well as assessing home education programs. This was the reason that an education qualification for registration officers was included in the draft Act in March. Whilst it is not mentioned in this Bill, it is still the government’s intention that those who assess non-government schools must have an education qualification. The DoE expects that from next year 3.5 full time equivalent registration officer positions will be required to cover the combined workload of home education assessment and non-government school assessment (that is almost double the current staffing level for monitoring officer positions). The Department has said that the Registrar may have the discretion to choose a mix of staff in such a way that not all monitoring/registration officers will need an education degree so long as there is a registration officer in the north and another in the south qualified to do the school assessments. Notice, however, how this privileges the selection criterion for school assessment over the selection criterion for home education; so a registration officer with an education qualification will be deemed sufficiently qualified to assess home education programs as well as assessing schools, whereas a registration officer with home education experience and no education qualification, will only be considered qualified for one of the roles.

6. The monitoring/registration officers will have more responsibility and power than previously. Under THEAC their main job was to verify that home educators were actually doing what they had said they were going to do in their Home Education Summary and Plans (HESPs). It was THEAC’s job to assess the HESP itself.

Under the new Bill, monitoring officers will:
- assess home education programs/plans against the standards [s68(2), s75(1 & 2)]
- conduct monitoring visits to assess whether the home education program is being provided to a “sufficient extent” and to gather any relevant information that will help the Registrar determine whether approving the home education program is in the best interests of that child. [s68, s69 (b), s75, s86]
- write a report and make a recommendation to the Registrar on whether the
home education plan should be approved, amended, revoked or have conditions applied.\[s68, s75, s86\]

- **Note**: The provision for ongoing visits “at any time” in Section 75, is intended mainly to follow up cases where the Registrar might have applied a condition to a home education program or if a complaint is made and the Registrar needs to check whether the complaint is justified.

7. **During a monitoring visit, the monitoring officer can:**
   - Ask to see the part of the premises where home education is conducted
   - Ask to see equipment and documents used in home education
   - Question the parent and the home educated child or youth on matters relating to the provision of home education

The HEA is concerned that the requirement in Section 87 (3b) that the registration officer “view that part of those premises that is, or is to be, used in the provision of home education” displays a fundamental misunderstanding of how home education works. In other states authorities have sought to use such requirements to restrict home education to the home address (and exclude activities that occur outside the home from inclusion in the approved home education program). Whilst the Department of Education staff involved in drafting the Bill have sought to reassure home educators that there is *no intention* to restrict the practice of home education to the house, it is important for home educators to consider how this legislation *may* be interpreted and applied by future authorities. In doing so, it is very instructive to look at how legislation has been interpreted in other states and to seek to ensure that our Bill is written as clearly as possible so that it cannot be used to restrict the practice of home education to the kitchen table or home address.

8. **THEAC will continue to act as an advisory body to the Minister and to the Registrar, but will no longer employ its own staff.** The administrative work that THEAC has previously done will be carried out by the Registrar (s224) and the registration officers or other state service employees reporting to the Registrar. [s221]. The Secretary of the DoE can also make staff available to THEAC to help it carry out its work.

9. **THEAC’s role in reviewing home education plans is somewhat clearer and stronger in this version of the Bill than it was in the draft version.** The registration officers will have to send all their assessment reports to both THEAC and to the Registrar [s68 (3)] and the Registrar must “seek and consider” THEAC’s advice on all yearly applications [s69 (3)], on all continuing assessments [75 (7)] and on any applications by home educators seeking approval for modifications they wish to make to their own programs.\[s74 (3)\] Also, where the Registrar has concerns about a home education program or its provision by the home educator, the Registrar must seek THEAC’s advice before applying a condition to, or revoking approval of a home educator’s program. [71 (3), 77 (3)]
However, as the number of home educators continues to grow and programs are being assessed more often than before, THEAC’s workload as a body of volunteers may, at some future time, become unmanageable. THEAC may end up needing to focus mostly on the minority of more complex or problematic registration cases and provide not much more than a cursory examination of most families’ programs.

10. **Home Educators will need to submit a new home education program and undergo monitoring visits at least yearly.** [s67] (The Registrar has the power to request additional documentation or to require extra monitoring visits at any time)

11. **Applications to renew registration will have to be submitted no less than 12 weeks and no longer than 15 weeks before the expiry of a home educator’s current registration period.** [S67(2)] Note: The draft Bill’s requirement for applications to be submitted by the end of term 3 of the year prior to commencing home education has been omitted from the revised Bill.

12. **Where more than one parent is involved in home educating a child, both parents can apply for registration on one application form, but they need to specify which parts of the home education program each will take responsibility for.** [s67 (3, 5)]

    - Recent advice from the Department of Education has clarified that this section is **aimed at parents who are not living together.**
    - This section of the Bill needs to be re-worded to clarify its intention and to ensure that it is not incorrectly interpreted to disallow the inclusion in the home education program of learning acquired from non-parental sources (such as tutors, sports coaches or music and drama academies).
    - The HEA believes that there needs to be a stronger recognition that the act of “providing” home education is not limited to the direct teaching of the child by a parent, but that home education frequently includes **facilitating** the child’s **access** to multiple sources of extra-parental input.

13. **THEAC will be made up of 5 to 7 members appointed by the Minister. The Minister is to ensure that the majority of council members are selected for their skills in, or experience of or related to home education.** The Minister must also appoint at least one Department of Education representative to THEAC. [s241] Council members are to be appointed for a 3-year term and can be reappointed for a second term. [Sch.4 part 2(2)]

14. **In regard to THEAC meetings:**
    - a meeting must be convened if two members request one or whenever the Chair decides to convene a meeting providing reasonable notice is given [Sch.4 part 3(10)]
    - members may participate by teleconference or videoconference [Sch.4 part 3 (13.2)]
    - quorum will consist of a majority of the members [Sch.4 part 3 (12.1)]
o a decision is carried by a majority vote [Sch.4 part 3 (12.3a)]
o the Chair, or person presiding in place of the Chair, has a casting vote if the vote is equal [Sch.4 part 3 (12.3b)]
  o the Registrar is entitled to be present for each THEAC meeting, but is not permitted to vote or participate in the discussion except to provide information or advice as requested by council. [Sch.4 part 3(15)] The Registrar could also delegate this function to a registration officer or other DoE employee reporting to the Registrar. [s221]
  o accurate minutes must be kept and presented to the Registrar within 14 days after a meeting. [Sch.4 part 3(16)]

15. **Under section 11 all children must be registered for home education (or enrolled in Prep at school) commencing the year that they are 5 years old by the 1st January. However, from 1st January 2021, parents will have the option to register a child who has reached the age of 4½ years by the 1st January (ie. they turned 4 years old by 30 June the previous year) [s2, s9]**

16. **If the family wishes to make major amendments to a home education plan after it has been approved they will need to notify the Registrar of the intended changes and seek approval. [s73]** Major changes include such things as a change in pedagogy (educational philosophy) or a change in part-time school enrolment details. Minor changes will not require approval.

17. **The Standards by which home education programs will be assessed for registration will form part of the subordinate legislation (Regulations). [s259]** Apart from the table of standards THEAC published on its website in August, we do not yet know what the Regulations will say. Regulations are typically renewed every 10 years, but can be renewed more frequently.

The standards are required to be in operation before being sent to parliament. The new standards can be viewed at [www.theac.org.au](http://www.theac.org.au). These standards come into force from 1st January 2017, although THEAC has said that home educators have the option to address these standards in any HESPs that are due before that date.

THEAC has said that it will have input into any future recreations of the standards, but this is not written into the Bill itself. It is also not clear whether the broader home education community will be invited to have input into the formation of new standards in the future and whether there are any processes in place for this to occur.

**Note 1:** Regulations are not subject to the same parliamentary process as the Bill. The government delegates authority to write subordinate legislation to other bodies (such as councils and other agencies). These regulations need to be Gazetted and tabled in both houses of parliament, but they are actually reviewed by a special committee made up of 3 members from each house of parliament called the (Joint) Parliamentary Standing Committee on Subordinate Legislation and are then signed off by the Governor.
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Note 2: Once established, regulations are very difficult to change through lobbying. In fact, the parliamentary committee can only request changes to regulations if there is a case for financial disadvantage (for example, in relation to fee increases that exceed the CPI) or a narrow range of other conditions that are unlikely to apply to home education. For further information on subordinate legislation refer to Subordinate Legislation Act 1992, Administrative Handbook, August 2013.

18. The Registrar, in consultation with THEAC, is to issue guidelines as to how home education programs will be assessed against the standards in the Regulations as well as guidelines to do with the application process. [s226]

19. Part-time enrolment in a school will be allowed for home educated children and will be regarded as part of their home education program - but only if the school principal has provided the home educator with a written in-principle agreement to the planned enrolment. Home educated students will be allowed to enrol in school based courses at one school for a maximum of 2 full days or the equivalent thereof. Exceptions to this maximum limit may be made if the student is transitioning back to school and intends to return to school full time in the next calendar year. In some cases students may be allowed to participate electronically rather than by physical attendance. School principals are required to report any unauthorized absences from, or failure to complete, a part-time school course, to the Registrar, which will trigger an assessment of the home education program. Fines for chronic non-attendance are also applicable. [s80, s81, s83]

20. Part-time enrolment in a post-Year 10 approved learning program is possible if the parent or youth applies directly to the Minister for Education and the Minister judges it to be in the best interests of the youth. [s34]

21. The Registrar can issue a Certificate of Year 10 (also Year 12) completion to a home educated person if the Registrar is satisfied that the student has been provided with the approved home education program to “a sufficient extent” during that year, taking into account any relevant Ministerial instructions.[s91, s93]

22. Home educators of Year 10 students must notify the Registrar by 24 December of their child’s study or work arrangements for the following year. (Fines apply) [s85]

23. All youth aged 16-18 years must be in full time study, training or work, or registered for home education, unless an exemption has been granted by the Minister - otherwise the parents can be fined and/or given a community service order. [s24] This will apply from 10 July 2017.

24. Families who move to Tasmania from elsewhere and who have children who have completed the equivalent of Year 10 in another jurisdiction, but plan to home educate in Tasmania, must notify the Secretary of the Department of Education that they plan to home educate. (Otherwise a fine can be applied) [s25]

25. If a family wants to remove a child from a school and home educate the child, the parents must notify the school principal in writing and the principal will send a
copy of that notice to the Registrar. The school must also tell the Secretary of the Department of Education within 7 days of the child’s enrolment being cancelled. If the child is being transferred to another school, the principal must notify the principal of the new school in writing and if the child has not been enrolled at the new school within 7 days, the principal at the new school must notify Child Safety (Protection) Services who are to treat this information as a suspicion that the child is being neglected or abused. [s20]

26. If the Registrar revokes a home educator’s registration, the home educated child must be enrolled in a school by the date specified on the notice of revocation. The home educator then has another 7 days from the date of the child’s school enrolment to notify the Registrar of the name of the school in which their child is enrolled. (Fines apply for non-compliance) [s84] According to advice received from the Department of Education staff involved in drafting the Bill, the time period to be specified on the revocation notice was deliberately left open to the Registrar’s discretion so that it could i) allow for school holiday periods and, especially, ii) allow for more flexibility - so, for example if a family of a child with a disability wanted to seek dual enrolment for their child in a special school and another school, they would have sufficient time to arrange that.

27. A home educator aggrieved by the Registrar’s determination to refuse or revoke their registration or to amend their home education program or impose conditions upon it, may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision. [s79] According to advice received from the Department of Education, if a family wants to lodge an appeal with the Magistrate’s Court, the court would allow them 28 days from the date of the Registrar’s decision to lodge their appeal. During the initial waiting period whilst the court accesses the required paper work from all parties, there may be a “stay” on the child’s requirement to enrol in school.

However, the experience of some families with the Magistrate’s court is that it can take a long time before a hearing date is set and even longer for a decision to be reached, by which time the home education program’s approval period could easily have expired, especially if it was conditional. It is quite possible that a family may be faced with enrolling their children in school at some stage during the appeal process. The initial cost to lodge an appeal is $91.80. More details about the application process can be found on the following website: http://www.magistratescourt.tas.gov.au/divisions/administrative_appeals_division/making_an_application.

Clearly, this is a process of last resort and would be a very difficult undertaking for a family who may be continuing to home educate other children or dealing with stressful life circumstances. The difficulty involved in making an appeal against a Registrar’s determination underscores the necessity of having registration officers and a Registrar with a very good understanding and appreciation of home education as well as the need for THEAC to have effective representation from the home education and disabilities sectors.

One positive aspect of the appeals process is that it requires the Registrar to show that they have duly sought and considered THEAC’s advice. Were the Registrar to make a decision against the advice of THEAC, they will be required to show good reason for their decision,
otherwise the magistrate is likely to overrule the Registrar's decision and throw the case out of court.

28. **A child who is living independently of their parents, or the parents of such a child, may apply in writing to the Minister for an exemption to the requirement to enrol at school or be home educated.** The Minister will assess each case on an individual basis and, if satisfied that it is in the best interests of the child, may grant an exemption. The child and/or parents will be issued with a certificate of exemption valid for a stated period of time. The Minister may attach conditions to the exemption.[s13 and s26]

29. **This Bill empowers the Secretary of the Department of Education or the administrative authority of a school to appoint an “authorized person” to look out for suspected truants in the community and to:**

   (a) approach any person who appears to him or her to be under the age of 18 years and is apparently not in attendance at a school or an approved learning program; and

   (b) request the person approached to provide –

   (i) his or her name, age and address; and

   (ii) the name and address of the school or the provider of the approved learning program normally attended by the person approached; and

   (iii) the reason for being absent from school or the approved learning program.

The authorized person is to show their identification card and may then accompany the child or youth to their home or school where they may speak to parents, school authorities or other education providers to verify the information given. (s40)

*Would you want your home educated child getting into a car with a stranger even if they did flash an identification card?*

30. **When a student has been absent from school or training due to illness or incapacity and the number of days absent has reached a total of 5 days in one calendar year the school principal can request a medical certificate for any further absences where medical reasons are cited.** [s19] The intention of this seems to be to allow a school principal who suspects that a child or family is using illness as a fraudulent excuse for a child’s absence from school to insist on some medical proof of the child’s illness. This could be problematic in cases where the child has a rare or difficult to diagnose illness, or where there is tension between the family and the school for a range of reasons, and where the parent’s view of what’s “in the best interests of the child” may differ from the school’s view.

31. **Any prosecutions for contraventions of Part 3 of the Act (which governs home education and compulsory attendance at school or approved training) must first be authorized by the Minister and must be commenced within one year of the offence.** [s256]

32. **It is an offence for anyone to employ a child or youth under the age of 18 during the hours that the child/youth should be engaged in home education or attending school or an approved learning program** (the latter is for post-Year 10 students). [s247]
The only exceptions to this rule are if the employer is named as a provider of the youth’s approved learning program or they have authorization from the Secretary of the Department of Education. Very steep fines apply for contraventions of this section of the Bill. Since home educators may have variable hours, this raises the question of how this would be applied in practice to home educated students. Advice from the Department of Education on this point is that if the part-time work is written into a child or youth’s home education program and approved by the Registrar, then this Section would not be a problem. It was also suggested that the Registrar may be able to issue a letter to the student and/or employer verifying that the work activity was approved.

# TASMANIAN LEGISLATIVE COUNCIL

## LIST OF MEMBERS

**AS AT 11 May 2016**

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7th October 2016
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