



COMMISSION FOR CHILDREN AND YOUNG PEOPLE

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Mr Simon Kent
Department of Education and Training
Regulation Review
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Dear Mr Kent

Thank you for the opportunity to make a submission to the current review of the *Education and Training Reform Regulations 2007* (the Regulations).

The Commission for Children and Young People (the Commission) promotes continuous improvement and innovation in policies and practices relating to the safety and wellbeing of children and young people generally, with a particular focus on those who are deemed vulnerable. The Commission is especially interested in policies and practices that impact upon the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people.

The Commission is keen to ensure that the review of the Regulations takes a preventative approach, to ensure there is not a disproportionate negative impact on Victoria's most vulnerable children, including Aboriginal children and young people, who are at a greater risk of being marginalised and achieving poorer educational achievements and outcomes. The Commission supports an approach respecting children's rights, including decision making in the best interests and safety of children and young people and how regulation can support this.

The Commission wishes to make comment in relation to a limited number of issues, including formalising the Partnering Agreement, compliance with the Child Safe Standards, Admission (Regulation 9), Student behaviour policies (Regulations 13 and 16), School Councils (Part 3) and Parents' Clubs (Part 4) and Home Schooling (Part 6, Regulations 65-73).

The Commission has particular concerns in relation to home schooling, and would like to see strengthening of the approval of registration, ongoing monitoring, assessment and visibility of children.

To discuss the material raised in this submission in further detail, please contact Ms Brenda Boland, Chief Executive Officer, on (03) 8601 5255 or at brenda.boland@ccyp.vic.gov.au.

Yours sincerely

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Andrew Jackomos PSM
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COMMISSION FOR CHILDREN AND YOUNG PEOPLE

Education and Training Reform Regulations 2007 Review

When considering the human rights of children as recognised in the United Nations Convention on the Rights of the Child (UNCRC) and how these apply in the context of provision of education, the Commission for Children and Young People (the Commission) believes the current review of the *Education and Training Reform Regulations 2007* should ensure that the regulations do not have a disproportionately negative impact upon vulnerable children and young people. In the *Commission for Children and Young People Act 2012*, vulnerable children and young people are defined as those who have been or are a child protection client, a youth justice client, a child or young person (or their carer) who has received services from a registered community service or who is leaving care. The Commission has a specific focus on Aboriginal and Torres Strait Islander children and young people, through the work of the Commissioner for Aboriginal Children and Young People. The Commission has used this lens when considering which specific regulations may negatively impact upon vulnerable children.

The Department of Education and Training (DET) has previously recognised the importance of special attention being paid to improve the educational achievement and outcomes of particular groups of vulnerable children, such as those in Out Of Home Care (OOHC) through the development of the *Out-of-Home Care Education Commitment Partnering Agreement*.

Child Safe Standards

The Commission notes that the new Child Safe Standards have been prescribed in a Ministerial Order (No. 870) which states that a registered school must be compliant with Child Safe Standards, meaning that the school must embed a culture of no tolerance for child abuse, through minimisation of risk and appropriate action if it appears to have occurred. It is expected that the current review would be cognisant of these new Standards and ensure that the regulations are aligned with them.

Regulation 9 Admission (Division 1 – Admission and attendance)

Before or when a child is admitted to a Government school, the parent of the child must complete and sign an admission form and provide evidence of the child's date of birth.

In relation to admission and attendance, the Commission is concerned that the Regulations do not address in corresponding detail the provisions outlined in Part 2.1 Compulsory Education in the *Education and Training Reform Act 2006*. This section of the Act places the onus on a parent as having a duty under section 2.2.1 to ensure that their child of compulsory school age must be enrolled at a school and attend, except in cases of children being home schooled. However, such attendance is not required if a 'reasonable excuse' applies such as illness or accident, being interstate or attending distance education, or a religious observance(s 2.1.3). Attendance is also not required if the child has been suspended or expelled from a registered school and is undertaking other educational programs through the Department or another registered school. The parent is also not liable if the child's failure to attend is due to their disobedience and not through any fault of the parent (s 2.1.3 9 (e)). These sections do not address how it is to be ensured that vulnerable children do not 'slip through the cracks' in being assured of access to education, especially as unlike parents, the Secretary of DHHS is not liable to prosecution for failure to comply with school enrolment or attendance for a child under their care (s 2.1.21 (5)).

The Commission's work with vulnerable children has highlighted that they are at greatest risk of not being enrolled in school, through a failure to commence school initially, or through being suspended or expelled due to behavioural issues and no other school being willing to enrol them. Whilst the Commission recognises the important role that the new Lookout Centres and Navigator program will have in preventing disengagement and re-engaging these children in education, a "safety net" for



vulnerable children would appear to be missing from the Regulations which could clarify the intent of the Act. The statutory framework does not appear to reflect that the DET has an obligation to provide an education to every child in Victoria, irrespective of behavioural issues that may arise as a result of trauma and abuse. Such an obligation would require the development of flexible education provision responsive to the child's needs.

Recommendation:

That the Regulations reflect that DET has a positive obligation to provide a "safety net" that guarantees every child a right to an education, irrespective of behavioural issues that may arise as a result of trauma and abuse.

Regulation 13 Student behaviour policy

- (1) *A school council of a Government school must develop a student behaviour policy for the students at the school.*
- (2) *The school council must have regard to the rights and responsibilities of students, parents and staff in developing the policy.*
- (3) *The school council must ensure that the policy is consistent with –*
 - (a) *section 2.2.19 of the Act; and*
 - (b) *these Regulations; and*
 - (c) *any guidelines issued by the Minister relating to student behaviour.*

The development of a student behaviour policy by a school should be consistent with Child Safe Standards and underpinned by the principles stated in Article 28 of the UNCRC. To ensure that the student behaviour policy does not disproportionately impact upon vulnerable children and young people, it is critical that the policy is informed by knowledge of trauma-informed care and practice. This is a strengths-based framework that is grounded in an understanding of and responsiveness to the impact of trauma, with an emphasis on physical, psychological and emotional safety for professionals and their clients. It must be ensured that the policy is not punitive, that it provides clear consequences and accountability for behaviour in a supportive environment. Given the relationship between learning difficulties, challenging behaviour and educational disengagement, the focus must be on early identification of issues impeding learning, effective intervention and re-engagement in education.

Recommendation:

That Regulation 13 (2) be amended to include that in developing a student behaviour policy, the school council should frame it in terms set out in Article 28 of the UNCRC, which states that all children have a right to education, with discipline in schools respecting children's dignity, and young people being encouraged to reach the highest level of education of which they are capable. Furthermore, Article 3 of the UNCRC specifies that the best interests of the child must be the primary concern in making decisions that affect them.

Regulation 16 Implementation of student behaviour policy

- (1) *The principal of a Government school –*
 - (a) *is responsible for implementing the student behaviour policy of the school; and*
 - (b) *is responsible for determining the nature and extent of the consequences imposed on students in the school for failure to comply with that policy; and*
 - (c) *may determine the consequences to be imposed on a student for not wearing the school uniform in accordance with any determination of the school council on school uniforms.*
- (2) *Before making a determination under subregulation (1) c), the principal of a Government school must be satisfied that the student's failure to wear the school uniform was because of the student's disobedience.*
- (3) *Without limiting subregulation (1), the principal of a Government school may require a student to undertake additional a school work at a reasonable time and place if that is authorised by the student behaviour policy.*

- (4) *The principal of a Government school must ensure that –*
- (a) *any periods of detention, additional school work or other consequences that may be imposed on students as part of the student behaviour policy are reasonable; and*
 - (b) *the student behaviour policy is brought to the attention of students, parents, staff, and members of the school council of the Government school.*

The role of suspension must be considered carefully and employed as an absolute last resort, as it has the counter-productive effect of further removing the child from engagement in education. Suspension also raises the risks for vulnerable children whose parents may behave punitively as a consequence of foregoing paid employment to supervise the child at home, or leave the child unsupervised, raising the risk of harm for that child even further. These circumstances highlight the importance of the school having a comprehensive understanding of the family's situation, which might include both parents working and no extended family members being available to provide assistance. Alternative strategies such as internal suspension should be considered as a method for focussing greater attention on engaging the child in intensive learning. There could be consideration given to arranging for a family or community member to attend the school and spend time with the student and staff. Such an arrangement might be especially helpful for Koori communities in assisting stronger engagement with the school.

For a student that has been expelled from a Government school, the option of an appeal to the DET Secretary is a course of action that vulnerable children would be unlikely to be able to take advantage of. A child who is experiencing abuse within their family is more likely to demonstrate challenging behaviours that might result in expulsion, but this child would also lack a strong advocate to ensure the continuation of their education. Consideration should be given to how such advocacy could be instituted for every child, and especially those who fall within the category of being vulnerable.

Whilst the Commission understands that these regulations do not apply to Early Years services, there is acknowledged to be issues relating to behaviour management and the risk of suspension and expulsion of Koori children in preschool settings. In these settings, the Committee of Management or the private provider can establish their own protocols and policies. It is therefore proposed that if an opportunity arises to address these issues in a review of regulations and policy in Early Years settings, then consistency with approaches in school settings should be sought.

Recommendation:

That Regulation 16 (4) (a) be amended to require that when implementing the student behaviour policy, the principal of a Government school must have regard to the best interests of the child (Article 3 UNCRC) and the principles underlying the Lookout Centres and Navigator program.

Part 3 – Government School Councils

Regulation 22 (1)

This regulation applies if school council is required to have community members appointed to the school council.

The Regulations in Part 3 and the associated Part 2.3 of the *Education and Training Reform Act 2006*, which relate to Government School Councils provide specific guidance on many governance issues, and the objectives, functions and powers of school councils. However, there is no mention of the desirability of School Council membership being representative of the broader school community.

The Act states in section 2.3.5 that the functions of a school council include:

- (i) to inform itself and take into account any views of the school community for the purpose of making decisions in regard to the school and the students at the school
- (j) to generally stimulate interest in the school in the wider community

To successfully achieve these functions, it could be argued that school councils need to represent the diversity of their community, particularly when many of the students' families are from a culturally and linguistically diverse background, which will reflect the local community. There should be an obligation and support to achieve this, including innovative strategies, to ensure that all members of the school community are represented on the school council and their voices heard. The first step is an analysis of whether the school council is representative of the school community, and if this is not the case, what the barriers are to parents or caregivers nominating, being elected and participating. A first step might be to encourage the involvement of local community leaders and members through an invitation to them to stand for election in the community members category of school council (Regulation 22). For those schools with Koori students enrolled, there may be an opportunity to invite the local Koori Education Support Officer (KESO) to at least provide consultation to the School Council on community engagement.

Involvement of community members in the governance of the school through school council may also assist in encouraging parents from minority (or majority) cultural or socioeconomic groups who are not represented, to consider nominating. These parents may experience challenges such as a lack of confidence, which may be underpinned by a poor understanding of the role, low literacy, negative experiences from their own schooling due to poor educational achievement, bullying, discrimination and racism. It is important that interventions are conducted to prevent intergenerational transmission of poor engagement in education and school council participation provides an important avenue for positive role modelling.

Recommendations:

To explore options to ensure that School Council is representative of the whole school community, with a first step being the amendment of Regulation 22, which outlines the process for the appointment of community members to School Council, to include a requirement to promote inclusiveness.

Regulation 22 could also be amended to include a specification for schools with Koori students enrolled, that the local KESO should be invited to provide consultation to the School Council on community engagement.

Part 4 – Division 1 - Parents' Clubs and Fundraising for Government schools

Regulation 42

A parents' club for a Government school must be formed in accordance with this Division.

This part of the regulations appears to present a lost opportunity to support community engagement in the school, as it only specifies a sole function of fundraising. Parent clubs may offer a 'soft entry' point for parents to engage with schools, rather than simply as a fund-raising body. Research has shown that student outcomes are enhanced and schools are more effective when families are engaged in their child's education. It is therefore critical that schools are socially inclusive and provide opportunities for parents and caregivers to participate. Schools should have an 'open door' policy to ensure that all parents and caregivers feel welcome.

This might begin with inclusive naming of the group to ensure that those who are kinship carers feel welcome. Many Aboriginal parents and grandparents may have negative associations with their schooling experiences due to a range of factors including systemic racism, so it is vital for their children that a positive relationship is forged. The KESOs may play an important role in promoting the inclusion of Aboriginal parents and kinship carers in community engagement activities of the school. It is also very important for schools to understand the varied nature of the schooling systems that parents and caregivers may have experienced in their countries of origin and assist them to understand and navigate the complexities of the Victorian system.

Recommendation:

That the Regulations relating to Parents' Clubs be amended to include an additional function that focuses on parent and caregiver engagement in the school that accords with an 'open door' policy that is inclusive of carers of vulnerable children.

Part 6- Home Schooling

Division 1 Application for registration for home schooling

Division 2 Requirements for registration of home schooling

Division 3 Cancellation of registration for home schooling

Regulations 65 to 73 deal with governance processes for registration of a student for home schooling, which is covered by Part 4.3 Division 2 section 4.3.9 of the Act. However in Victoria, unlike in other states and territories (Marshall, 2014), there are no requirements regarding assessment of the suitability of the parent or the home environment for the conduct of home schooling. The sole requirement is that the parent completes an annual application for registration that declares there is no conflicting legal agreement (such as a child agreement or parenting plan under the *Family Law Act*) and that broad curriculum areas will be covered, and that the education provided will be consistent with democratic principles, and provision of proof of the child's date of birth. It has been alleged that many parents do not even undertake this simple registration process (Twomey, 2015), suggesting a lack of reliable data about how many children are being home schooled in Victoria. This lack of oversight by DET of children who are home schooled is of concern to the Commission, which has undertaken three Child Death Inquiries (CDIs) over the past five years relating to children who have been home schooled (see **Attachment 1**).

Taken together the Act and the Regulations do not require an objective assessment of the parent's capacity to provide a satisfactory educational program, nor that the parent demonstrates having a teaching qualification, skills or experience. There is apparently no system for assessing that the child is making sufficient progress in their skills and development and no mechanisms to trigger a review by the responsible body. Overall, there is a lack of visibility of home schooled children, as there is no requirement for them to be sighted and the Act specifies that their details cannot be made public. Whilst many parents who home school their children may be sufficiently skilled to undertake this role, there is currently no assessment to ensure this is the case. This may allow situations where a parent has low literacy, mental health or drug and alcohol issues, or distrust of authorities, to be the sole provider of education for their child. The child's social skill development may be compromised through a lack of contact with peers and alternative role models, their immunisation status may not be equivalent and they may be unlikely to have access in the home environment to the resources to develop digital literacy. In Victoria, children who are being home schooled are not required undertake external benchmarking assessments such as NAPLAN (National Assessment Program - Literacy and Numeracy), unless they are partially registered at their nearest neighbourhood Government school, in which case they are eligible to sit NAPLAN tests which are only administered in a school-based setting. Participation in NAPLAN testing would assist in highlighting any deficiencies in their academic progress.

Children subject to home schooling, and for whom there may be protective concerns, such as the risk of abuse and neglect or exposure to family violence, are at greater risk given their decreased contact with professionals able to monitor their wellbeing. It is imperative that these children are subject to greater scrutiny through strengthening of registration processes including proof of parental capacity, assessment of the home environment, ongoing monitoring of academic progress, home visits to ensure the child's wellbeing, and prosecution of parents who have not formally registered and received approval for their child to be home schooled.

In New South Wales, the Office of the Board of Studies has much more stringent regulation of home schooling than that which is currently in existence in Victoria through the Victorian Registration and Qualifications Authority (VRQA). In NSW, although parents are not required to demonstrate that they have relevant qualifications or teaching experience, they are required to demonstrate the capacity to plan and provide for the educational needs of the child. There are nine mandatory requirements for registration which relate to the areas of the syllabus, learning outcomes, catering for the individual child's learning needs, recording teaching and learning and the child's progress and achievements, and time allocation for learning is sufficient. Arrangements are also to be made for an inspection of the home to assess if the proposed learning program is suitable for effective home learning, whether the home learning environment is appropriate to meet the child's needs, and if the resources accessible in the home and externally are adequate to support the child. In Western Australia, the home education moderator visits the home annually, and within the first three months in the initial year of home schooling. The purpose of these visits is to assess the child's educational progress and any learning problems and suggestions for strategies or resources that may assist. The moderator provides a written report to the home educator in relation to this, and an evaluation report for the departmental region. In South Australia, each child must be enrolled in a school and then apply for an exemption from attendance, and an annual home visit is also required to be conducted by the department. In Queensland, the home educator is required to provide an annual written report outlining the child's progress. These models taken together would appear to offer many attributes that if incorporated in Victoria would strengthen the home schooling system to protect children.

Recommendations:

That the Regulations for home schooling be strengthened (using as a model relevant sections of Schedule 2 Minimum standards for registration of schools and a combination of the best features from interstate models), to ensure registration is approved subject to:

- assessment of parental capacity to plan and provide for the child's educational needs
- the home environment been assessed as suitable
- satisfactory academic progress being achieved, and
- as a minimum, annual home visits being conducted to ensure the safety and wellbeing of the child.

References

Marshall, K. (2014), *Home-schooling on the rise*, The Age, 30 January 2014.

Twomey, S. (2015), *Black market home schooling runs rampant in Victoria*, The Weekly Times, 28 January 2015.

Case Examples of Child Death Inquiries (Home Schooling)

1. In the most recent Child Death Inquiry (CDI) involving home schooling, a child died after living in squalor. There were no other services the child had had contact with and no assessment of parental capacity to deliver an appropriate educational program. There was no monitoring to ensure that an educational program was occurring and no follow up to determine if the child was developing basic literacy and numeracy skills to enable acceptable quality of life and potential employment and community participation. Following this child's death, his sibling is now accessing schooling and has required significant support to develop literacy and numeracy skills.
2. In a second CDI, the subject child with a disability was neglected and had not attended school for a year, and it was claimed that she had previously been home schooled.
3. In the third CDI, the sibling of the subject child did not attend school and was also reportedly being home schooled. Lack of parental supervision has been identified as a protective concern, and both children had developmental delays and required specialist schooling. Concerns arose regarding the ability of the parents to undertake teaching given the compromised levels of functioning, increasing the level of complexity involved.

