



## The 2013 Registration for Home Schooling in NSW Information Package and the NSW Education Act (1990)

Many parts of the Legislation are not relevant to the process of advocating regarding the 2013 Information Package (IP), but some are. This document covers the latter. It also covers specific aspects of the IP. All emphases (bold, underline) are ours.

Key issues that we have identified and addressed below are:

1. The IP does not reflect the specifics or the intention of the Act. For example, the Act states that “the education of a child is primarily the responsibility of the child’s parents”, while “it is the duty of the State to ensure that every child receives an education of the highest quality”. Therefore, the Board of Studies role is with regard to ensuring the quality of the education, without stipulating how the education program must be delivered. The IP does not address these and other practical and philosophical aspects of the Act.
2. Time delivering programs to be comparable to that allocated by schools (e.g. IP page 10). The Act does not support this statement, as it indicates time can be generally indicated, but not mandated, in a syllabus.
3. Registering for specific years of schooling. The IP states that the certificate of registration will indicate the year or years of schooling for which the registration applies. The precise meaning of this is not clear and people have had different experiences. The Act, though, makes no mention of students being restricted to the years, or even stages, they can undertake. It is difficult to understand how “courses of study in each key learning area [can] be appropriate for the children concerned having regard to their level of achievement and needs” (noted in the Act and the IP), if flexibility regarding years is not available, particularly in the case of children working across more than one year/stage in different key learning areas (KLAs).
4. Requirement to apply “to deliver an educational program in advance of the years of schooling specified on the child’s certificate of registration.” Following from the above point, there is no indication in the Act that any advancement (or delay) in a child’s schooling program based on their needs requires an application to an overseeing body of any sort.
5. Teaching in the home, and by the parent. There is nothing in the Act that supports this requirement. The same is true for the statement that travelling is not permitted while educating.
6. Visits to the home for compliance checks. These are supported by the Act, specifically in relation to home education. There is nothing in the Act, though, that suggests the child is required to be sighted.
7. Development of programs/syllabuses. The IP states that “the parent must deliver the NSW Board of Studies curriculum ...” The Act requires that education programs must accord with the NSW syllabuses, **or a syllabus endorsed by the Board and approved by the Minister**. Therefore, there is flexibility in this area.
8. Completion of Year 10 through TAFE (IP, page 6). TAFE is an option for undertaking year 10-equivalent courses and there is nothing in the Act that states a student’s enrolment at TAFE must be approved by the Board, nor is there a restriction on the age at which such courses can be undertaken.
9. Limited period for initial registration. This is not supported by the Act for home education, though it is identified with regards to non-Government schools.
10. The role of the Board in relation to Home Schooling. In the Act, the role of the Board, or its Authorised Persons, is to assess applications and recommend registration or not. The Act also allows for inspections of registered home schooling premises and viewing of records. Extrapolating from the statements regarding the responsibilities of parents and the duty of the board, it may be argued that the role of the Board (and its Authorised Persons) is to “ensure education ... of a high quality”.

11. Covering multiple outcomes with single activities. This is not mentioned in the IP (though one sample of a program provided in the Package that could have covered multiple outcomes but has only one listed) and it is not in the Act. This is mentioned as some families have had this approach rejected.
12. The role and makeup of the Board of Studies is specified in the Act. This Board contains a range of nominated individuals and representatives of various groups. Home Educators could seek a seat on this Board.

IMPORTANT NOTE: There are two elements in the Act that should be considered in the lobbying process.

1. At the end of Section 6: “Objects for administration of this Act or of education,” there is a paragraph that reads (2) “This section **does not limit the operation of any other provision of this Act**”. This means that the philosophical statements regarding the types of education to be provided, including the principle of “assisting each child to achieve his or her educational potential,” and “encouraging innovation and diversity within and among schools,” do not override aspects of the Act such as syllabus and registration.
2. Section 8: (1) (e) “courses of study in a key learning area are to be provided in accordance with any relevant **guidelines** developed by the Board and approved by the Minister.” It is possible that there are guidelines that have been developed by the Board, and approved by the Minister, which are not publically available. These guidelines may provide for the directions that are in the IP but are not reflected in the Act.

## Fuller details about the above points

### The 2013 Information Package does not reflect the specifics or the intention of the Act

The Act contains, at Sections 4, 5 & 6, philosophical statements about education. These include that education is the **responsibility** of parents, while the State has a **duty** to ensure education is of a high quality. Other statements within Section 6 indicate that the Government believes education should be non-discriminatory, encourage innovation and diversity, lead to children achieving their potential, address the needs of Aboriginal students, and address the difficulties for groups of people or classes of people. These principles are embraced by the Act, but the IP has no regard for the educational innovation and diversity embodied within home education practice. As such it can be considered to be discriminatory.

Duty and responsibility is the same thing according to the law. Legal definitions include, “A legal responsibility owed by one person to another person.” Sometimes this means that the person with the duty (responsibility) must *do* something; at other times this means that the person with the duty (responsibility) must *not* do something.

[http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist\\_legalwords.html#D](http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist_legalwords.html#D)

The logical extension of this, given parental responsibility for education, is that the State cannot stipulate the manner of education, but only assess the quality of it. Thus, it would seem to be beyond the OBoS’s scope to reject a claim for registration based on failure to follow their stipulated framework. If a natural learning program has been shown to produce quality learning, there would seem to be no grounds for the OBoS to reject an application. (The requirements for curriculum and syllabus are addressed below.)

As philosophical statements, Section 6 provides for important scope, innovation and diversity, but is open to interpretation and argument from a number of angles. From our reading of the Act, we would argue that education should support innovation and diversity, yet the IP renders this impossible for home educators who are, by their nature, diverse and innovative in their approaches to education.

Aspects of the new IP, such as prescription of time spent on subjects and prescription of manner of instruction (in home, and by parent), contravene Section 6, Paragraphs 1 a) “assisting each child to achieve his or her educational

potential” and 1 c) “encouraging innovation and diversity within and among schools”, and do not promote best educational practice.

Further, the manner in which the registration process might support family values (as per Section 6 (1) (n)), above, is not canvassed in the IP.

## Time spent delivering programs

The IP states on page 10: “the time allocated to learning is sufficient to allow coverage of the curriculum **and is comparable to the time allocated by schools**”. This is also stated several times in sections 2 & 3, for example on pages 12 and 14. The Act clearly states, however, at Section 14 Syllabuses, that time cannot be mandated

- (4) **Any syllabus developed or endorsed by the Board for a particular course of study may indicate generally the period of time that should be allocated to the teaching of the course, but is not to make a specific period of time mandatory.**

## Registering for specific years of schooling

The IP states, on page 6:

*A certificate of registration for home schooling will specify a Year or Years of schooling for primary education (Kindergarten to Year 6), secondary education (Year 7 to Year 10) or for the curriculum beyond Year 10 (Year 11 and Year 12).*

*The specific Year or Years of schooling recorded on the certificate of registration will be based on the educational program to be delivered in the home and the period of registration.*

*Discussion with an Authorised Person when assessing an application for home schooling registration may be part of the process for determining the Year or Years of schooling to be recorded on the certificate.*

This statement appears to direct against, but not preclude, registering a child for the ‘Primary’ years, or the ‘Secondary’ years as has been done in some cases in the past and more recently. The Information Pack does talk about catering to the specific learning needs of the child who is being registered, but does not provide a mechanism for specifying and developing flexible programs to meet these needs. For example, it does not nominate the potential for advancement in one subject in combination with delay in another; that is, ‘teaching to a child’s identified needs’.

The Legislation does state:

### 6 Objects for administration of this Act or of education

(1) It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:

- (a) assisting each child to achieve his or her educational potential,
- (c) encouraging innovation and diversity within and among schools,
- (j) provision of opportunities to children with special abilities,
- (k) provision of special educational assistance to children with disabilities

This allows for programs that meet the needs of students, without limit. At the same time, this is the Section that contains the statement at 6: (2) “This section does not limit the operation of any other provision of this Act”. We have not identified any other “operation” of the act that may be impacted by this position.

## Requirement to “apply to deliver an educational program in advance of the Years of schooling specified on the child’s certificate of registration”

Following from the point above, that registration should not be restricted to specific years or stages, registration should allow scope to teach anywhere on the year/stage spectrum. Yet, the IP states, on page 18, that:

*If, based on your child’s identified learning needs and achievement, you wish to deliver an educational program in advance of the Years of schooling specified on the child’s certificate of registration, you must notify in writing the Home Schooling Unit providing details of the proposed change,*

and the Act states, at 73 (1), that: “The registration of a child for home schooling is subject to the conditions specified in the certificate of registration.” Therefore, it is important that the certificate of registration allows the freedom to do this. This could be largely achieved by specifying no more than Primary or Secondary schooling or by removal of any requirement to specify years of schooling on the registration certificate.

## Teaching in the home, and by the parent

On page 5 of the IP, it is stated that: “The educational program upon which a child’s registration is based must be **delivered in the child’s home**”. (This also appears in the 2011 Information Package). In addition, it is stated that “Home schooling, also referred to as home education, requires **a parent to deliver** the NSW Board of Studies curriculum”. (This differs from 2011 Information Package). The Legislation makes no mention or indication of this. The IP states it repeatedly.

On page 11 there is a statement that “Registration for home schooling requires a parent to take responsibility for **developing** and **delivering** all aspects of the educational program ...” This requirement directly contravenes the Act’s intention for diversity and innovation in education to be met. For example, GERRIC<sup>1</sup> suggests that GATS students have access to mentors who are experts in those students’ areas of giftedness. It is also internally inconsistent, as at page 10, “requirements for registration,” it says that “the resources within the home **and those accessed externally** are adequate to support the learning needs of the child.” The Act, furthermore, allows the OBoS to endorse syllabuses other than the NSW BoS syllabuses (for fuller information, see *Syllabuses* in the next section of this document).

Further, there is no statement in the Legislation that indicates education cannot be delivered whilst travelling, though it is claimed to be the case in the IP, on page 28, under the heading “*Can I register my child for home schooling if I plan to reside overseas or outside NSW for a period of time?*”

## Visits to the home for compliance checks

The IP states, at page 15:

*From time to time the Office **may monitor compliance** with the requirements for registration. When this occurs, an Authorised Person contacts the parent to organise a home visit to review **evidence relating to compliance** with the requirements for registration.*

This requirement is supported by the Act under Section 74, which states:

74 Cancellation of registration for home schooling

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<sup>1</sup> The GERRIC material here comes from *Regional and Remote Workshops for Parents About Gifted Education* booklet of support material, 2004. GERRIC stands for Gifted Education Research, Resource and Information Centre, and is located at the University of NSW.

- (1) The Minister may, on the recommendation of an authorised person, cancel the registration of a child for home schooling by notice in writing to a parent of the child, if the parent:
- (a) has failed to ensure that the child receives instruction in accordance with the conditions to which the registration is subject, or
  - (b) has refused or failed to allow an authorised person (in accordance with those conditions) to enter, at any reasonable time, the premises where the child receives schooling or to inspect those premises or records required to be kept for the purposes of this Act, or**
  - (c) has breached any other condition to which the certificate of registration is subject.

It is also noted that the IP states, at page 13, that “It is expected that the child for whom registration is being sought, will be present during the assessment”. This is not present in the Legislation, even at 74) 1) b) listed above.

Further to this point, the IP is clear that the approvals process involves reviewing material from the previous period of registration (where it is not a first time registration), and plans for the upcoming period. Neither of these requires sighting the student.

## Development of programs/syllabuses and outcomes

### *Syllabuses*

The Information Pack states that **the parent must deliver the NSW Board of Studies curriculum** in the home (see page 5, About Home Schooling, paragraphs 3 & 4). At page 10, “Requirements for registration”, it is stated that:

*the educational program is based on the curriculum provided by the Education Act 1990, that is, the minimum curriculum for primary education (Kindergarten to Year 6), the minimum curriculum for secondary education (Year 7 to Year 10) or the curriculum for beyond Year 10 (Year 11 and Year 12) (Note: The minimum curriculum is the curriculum provided by the relevant Board of Studies syllabuses. Part 4 of this package details the curriculum requirements.)*

and that: *the educational program is based on, and taught in accordance with, the relevant Board of Studies syllabuses*

In the first instance, this reflects an error by conflating the curriculum with the syllabuses. Whilst the syllabuses may embody and provide details for achieving the minimum curriculum, the 6 KLAs for primary school and 8 KLAs for secondary school are the minimum curriculum. The syllabuses contain the material that makes up the courses of study for each of these KLAs.

Importantly, and in contradiction to the IP, the Legislation allows the Board to endorse a syllabus. It is stated in the Act:

#### 8 Minimum curriculum for primary education

(1) The curriculum for primary school children during Kindergarten to Year 6 must meet the following requirements:

- (f) courses of study in a KLA are to be based on, and taught in accordance with, a syllabus developed **or endorsed by** the Board and approved by the Minister. (emphasis added)

This is the same for secondary school – Section 10 (1) (e).

This is reiterated in the Act at Part 3, Division 3, Section 14 Syllabuses.

In effect, the Act allows the Authorised Person to endorse (by approving registration) any course of study that otherwise meets the minimum curriculum. Therefore, the IP statement is directly contradictory to the Act. The only other basis upon which courses of study which meet the minimum curriculum could not be approved, is lack of quality (as per Section 8, noted above). Quality bears no resemblance to recording method and mode of planning.

The second point in the IP in this same section reiterates the above error.

## *Outcomes*

It is important to note that the Act, at Section 14 Syllabuses, supports the IP's requirements for the provision of outcomes (e.g. page 10) as part of syllabuses for courses of study. This Section states:

- (3) Any syllabus developed or endorsed by the Board for a particular course of study **is to indicate the aims, objectives and desired outcomes** in terms of knowledge and skills that should be acquired by children at various levels of achievement by the end of specified stages in the course, and any practical experience that children should acquire by the end of any such stage.

## **Completion of Year 10 through TAFE**

The IP states that students may complete the equivalent of Year 10 through TAFE “**if approved.**” Additional criteria are that the student has “completed Year 9 and [is] a minimum of 15 years of age”. There is nothing in the Education Act that limits access to TAFE courses for completion of Year 10 equivalency. If there are limitations, such as age restrictions on people attending TAFE, then these are TAFE policies and should not be included in this document – it is up to TAFE to determine and enforce such rules, or to allow exemptions.

There is nothing in the Act that restricts the age at which a student can complete Year 10. The Education Act says:

Part 5 Attendance of children at school

21B Compulsory school-age

(2) The minimum school leaving age is:

- (a) the age at which the child completes Year 10 of secondary education (subject to participation required by subsection (3), or
- (b) the age of 17 years, whichever first occurs.

(5) The completion of Year 10 of secondary education is:

- (b) the completion of a course provided by the TAFE Commission that is approved by the Minister as the equivalent of Year 10 of secondary education in this State, or
- (d) the completion of education in any special circumstances approved by the Minister.

## **Limited period for initial registration**

The IP says that an initial registration will be for less than the two year maximum (page 14) and later states that this may be up to 1 year for the first registration (page 14). This kind of limitation of initial registration is not stipulated in the Act for home education. It is worth noting, however, that Non-Government schools are limited to a 1 year initial registration period.