

Legislation Note ***School Education Act 1999 (WA)***

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Introduction

Since 1928 when the *Education Act 1928* (WA) [the 1928 Act] first came into operation, this single piece of legislation and associated regulations, both amended on numerous occasions since 1928, have governed the matter of education in Western Australia. As the principal consultant for the Education Act Review Project has noted,¹ the 1928 Act is in fact a consolidation of amendments to the earlier *Elementary Education Act 1871* and the *Public Education Act 1899*, and that some of the processes and matters suited to the management of education in earlier times are still prescribed for the 1990s by the 1928 Act.

In 1994 the then Minister for Education in Western Australia initiated a major review of the *Education Act 1928* (WA) and associated regulations. After wide-ranging consultation with the community and much debate in the Parliament, the new *School Education Act 1999* (WA) [the 1999 Act] received royal assent on 2nd November 1999. It is anticipated that the 1999 Act will come into operation in the second half of this year after associated regulations have been drawn up in support of the new statute.²

The 1999 Act

As one glances through the 1999 Act, it is immediately apparent that it is a much longer and more detailed statute than the 1928 Act. The 1928 Act contains less than 75 sections, while the 1999 Act incorporates, transitional provisions aside, 247 sections. The 1999 Act is divided into 7 parts, and its overall framework gives a sense, visually at least, of coherence and structure sadly lacking in the 1928 Act, given the numerous amendments to it over the years.

Comprising eight sections, Part 1 of the 1999 Act deals with traditional matters that any statute usually deals with, such as the short title, the commencement date and definitions. However, and unlike the 1928 Act, the 1999 Act contains a list of key objectives of the Act:

- every Western Australian child has a right to receive a school education;
- parents have the right to choose from the options of a government school, a non-government school and a home education, the form of education that best suits their child's needs;

- the involvement and participation of parents in their child's education are important to that child's education;
- the Government has a responsibility to provide for government schools that meet the educational needs of all children.

The same section listing these four objectives then charges any person having a function under the Act with the obligation of seeking to ensure that these objects are achieved (s.3(2)).

Part 2 comprises forty-six sections. Matters specifically addressed are the compulsory enrolment of all children in an educational program, procedures for the enrolment of children at a government or non-government school, attendance requirements for students enrolled at a government or non-government school, the absence of students from government schools for religious or cultural observances, absenteeism in both government and non-government schools, and the provision by parents of home schooling.

Part 3 contains provisions applying only to government schools. It deals with a range of matters:

- establishment, closure and amalgamation of government schools, and the processes of designating schools as only available for the enrolment of students in particular areas;
- functions of the chief executive officer of the department responsible for government schools and of principals and teachers in those schools;
- curriculum in government schools, the provision of religious education, and conscientious objection to instruction in particular subjects;
- entitlement of persons (eg. children who are non-residents of the state, persons who are beyond their compulsory education period, children with disabilities) to enrol at government schools, and the resolution of disputes about enrolment;
- suspension and exclusion of students for breaches of school discipline;
- imposition of fees and charges in government schools and the management of school funds;
- management of miscellaneous matters relating to the operation of government schools (eg. disruptive persons on school premises, dissemination of various types of information on school premises); and
- establishment and operation of school councils and P&C associations.

Part 4 of the 1999 Act addresses in particular the registration, operation and funding of non-government schools. There are provisions relating to the registration, and requirements for registration, of non-government schools, the recognition of groups of schools as 'system' schools, the inspection of registered non-government schools, and funding arrangements (eg. parliamentary appropriations and loan arrangements) relating to non-government schools.

Under the 1928 Act, pre-school programs for children below the compulsory school age were provided by both non-government and government care-centres and pre-school centres, and provisions under that statute dealt with such matters as the issuing of permits for the conducting of such centres and financial assistance to such centres (Part VIA of the 1928 Act). The 1999 Act

treats non-government care-centres and pre-school centres as non-government schools and subjects them to the regulatory framework set out in Part 4. Care-centres and pre-school centres where teachers are provided by the Education Department are termed ‘community kindergartens’ and are regulated by Part 5 of the 1999 Act. Provisions in Part 5 deal with the registration, management, operation and funding of community kindergartens.

Part 6 of the 1999 Act deals, in a broad sense, with departmental administrative matters. Provisions address, for example, the functions and powers of the Minister for Education, the establishing of a department of the Public Service and its chief executive officer with responsibility for assisting the Minister in the administration of the 1999 Act, the appointment, management and discipline of teachers, and the establishment of panels to advise on aspects of the operation of the legislation.

Part 7 of the 1999 Act addresses a range of miscellaneous matters: the requirement of confidentiality with respect to certain information, the taking of legal proceedings under certain provisions, the making of regulations, the requirement of a review of the legislation, and the repeal of the 1928 Act.

Comments and Comparisons

As one works through both the 1928 Act and the 1999 Act, the overall approach of the 1999 Act seems to be one of ‘modernising but with an eye on the future’. The 1999 Act abandons many of the fundamentals that have been a part of school education in the state for more than seventy years and it puts in their place approaches that seem more in line with what might be expected of a responsive education system in a changing and more pluralistic society.

The 1928 Act has, as a major focus, attendance at a school, and the compulsory nature of education as is so common in Australia is satisfied primarily by physical attendance at a government or non-government school (s.13 of the 1928 Act). The 1999 Act focuses more on the notion that the compulsory nature of education is met by enrolment in an educational program, irrespective of the physicality of the location where such a program is offered. The duty to be enrolled in an educational program can be satisfied through enrolment of a child at a government or non-government school, or through the registration of a parent as the child’s home educator (ss. 9-10). While home schooling receives scant coverage under the 1928 Act and associated regulations, it receives considerable attention in the 1999 Act (ss.46-54 of the 1999 Act) and is readily accepted as a legitimate avenue through which a child can be enrolled in an educational program. The focus on enrolment in an educational program, rather than physical attendance at a school, also allows for greater flexibility in the ways in which a child might participate in the educational program of a school. There are provisions in the 1999 Act that allow students to attend places other than the school and to there participate in activities that are part of the school’s educational program (eg. ss.23-24).

A significant feature of the 1999 Act is the provision of review mechanisms with respect to various decisions made under the legislation. The 1928 Act contains little in the way of review or appeal processes with respect to decisions made pursuant to it. The 1999 Act, on the other hand, makes extensive use of advisory panels as a review mechanism. A general power is given to the Minister for Education to establish advisory panels for the purposes of the Act to advise in those

circumstances and upon those matters determined by the Minister (s.241). The types of panels envisaged by this power include the Non-Government School Registration Advisory Panel (s.168) and the Community Kindergarten Registration Advisory Panel (s.201). These two panels are authorised to review certain decisions of the Minister concerning registration matters and to report back to the Minister with recommendations. Upon receipt of the recommendations the Minister may confirm, vary or reverse his/her own decision. The Minister is required to give written notice of the subsequent decision and, interestingly, written reasons for that decision. Another similar panel is the Home Education Advisory Panel with jurisdiction to review a decision of the chief executive officer to cancel a home educator's registration as a home educator (s.54). This Panel, too, is authorised to make recommendations to the Minister, and the Minister is then authorised to confirm, vary or reverse the chief executive officer's decision, with the requirement that written reasons for the Minister's decision must be provided by the Minister.

The 1999 Act further authorises the Minister to establish a range of other advisory panels to review and/or advise on diverse matters. For example, the Minister is empowered to establish a School Attendance Panel whose primary function is to assist and advise on a student's persistent absenteeism from a school (ss.39-40). The 1999 Act also authorises the establishment of a Disabilities Advisory Panel (s.87) and a School Discipline Panel (s.93), each having a specific advisory and/or review role in relation to various matters.

A primary focus of some of the review processes mentioned above is the decision that has been made. These review processes represent, in essence, a form of review on the merits, similar to that which might be exercised by an administrative appeals tribunal. The 1999 Act also allows in some cases procedural review. For example, s.223 allows the Minister to review the procedure by which a decision was made by any person performing a function for the purposes of school education and where the decision concerns an individual student. This right is in addition to any right a person might have to seek review by the WA Ombudsman (s.223).

There are many other aspects of the 1999 Act that warrant comment but space does not permit. Under the 1928 Act, for example, fees and charges of any kind in government schools were rare even if authorised in very limited circumstances (eg. ss.11-12 of the 1928 Act). Under the new legislation, however, provision is made for the levying and payment of fees for instruction, charges and costs in a much wider range of circumstances (ss.97-108 of the 1999 Act). The policy decision to impose such charges in government schools in Western Australia has proven to be somewhat controversial. The 1999 Act also advances the cause of devolution Western Australia-style. Where the 1928 Act envisages the establishing of school decision-making groups for various functions (ss.21C-21F of the 1928 Act), the new legislation contains detailed provisions requiring the setting up of school councils with authority to exercise a number of functions such as establishing and reviewing the school's objectives, priorities and general policy directions (ss.124-140 of the 1999 Act). While not going as far as the model of devolution adopted in Victoria for example, these provisions can be seen as a further step in a devolution process for Western Australian government schools. And while the 1928 Act makes the disciplining of government school teachers a strictly departmental affair (eg. s.7C of the 1928 Act), the 1999 Act moves the disciplining of teachers into the public sector arena and draws on public sector standards by which to judge teacher behaviour (s.236 of the 1999 Act).

Conclusion

For more than seventy years the 1928 Act and associated regulations, both much amended, have governed the management of education in Western Australia. After a somewhat protracted gestation period, the 1999 Act has emerged as the blueprint for school education in Western Australia and represents a very significant change to the way in which education will be managed in the state for the foreseeable future.

Endnotes

- 1 Booth, Ken (1995) Looking over the Horizon – Issues in the Development of School Education Legislation for the New Century, paper presented to the Fourth ANZELA Conference, Melbourne, September.
- 2 See the website for the Education Act Review Project at <http://www.edreview.wa.gov.au>.