

# Home Education in Victoria: Summary of Legal Situation

## Prepared by the Home Education Network Dec 2015

*The Education and Training Reform Act 2006* requires home educators to “register children for homeschooling in accordance with the regulations and to ensure that the child receives instruction in accordance with the regulations.” A registration form can be obtained from the [Victorian Registration and Qualifications Authority \(VRQA\)](#).

The full Act is available online at <http://www.legislation.vic.gov.au/> click on ‘Victorian Law Today’, select ‘Acts’ and enter *Education and Training Reform Act*. The Act covers many areas and runs to 634 pages. We have extracted the most relevant information from the Act and the regulations for you below. **Explanatory HEN notes are contained in green.**

Note: Penalty units are fines are indexed annually. One penalty unit is \$151.67 in the 2015–16 financial year.

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## EXCERPTS FROM THE EDUCATION AND TRAINING REFORM ACT 2006

### Definitions

**compulsory school age** means not less than 6 nor more than 17 years of age;

**principal** means a person appointed to a designated position as principal of a registered school or a person in charge of a registered school; [i.e. does not include a home ed parent]

**registered school** means a school registered under Part 4.3; [i.e. does not include a ‘home school’]

**registered teacher** means a person registered under Part 2.6 as a teacher or a person who is granted permission to teach under Part 2.6; [i.e. not home educator]

**school** means a place at or from which education is provided to children of compulsory school age during normal school hours, but does not include –

(a) a place at which registered home schooling takes place; ...

**school attendance notice** means a notice issued under section 2.1.16

**school attendance officer** means a person appointed by the Minister to be a school attendance officer under Part 2.1; [the only ones we know of are Regional Directors]

**school day** means day on which a school is open;

**school enrolment notice** means a notice issued under section 2.1.15

**State Register** means the State Register maintained under Part 4.6;

**Student Register** means the Student Register established under Part 5.3A;

**Victorian student number** means the number allocated to a student by the Secretary under Part 5.3A;

### PRINCIPLES

**1.2.1 Principles underlying the enactment of this Act** Parliament has had regard to the following principles in enacting this Act—

- (a) all providers of education and training, both Government and non-Government, must ensure that their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy, including a commitment to—
- (i) elected Government;
  - (ii) the rule of law;
  - (iii) equal rights for all before the law;
  - (iv) freedom of religion;
  - (v) freedom of speech and association;
  - (vi) the values of openness and tolerance;

- (b) all Victorians, irrespective of the education and training institution they attend, where they live or their social or economic status, should have access to a high quality education that—
- (i) realises their learning potential and maximises their education and training achievement;
  - (ii) promotes enthusiasm for lifelong learning;
  - (iii) allows parents to take an active part in their child's education and training;
- (c) information concerning the performance of education and training providers should be publicly available;
- (d) parents have the right to choose an appropriate education for their child;
- (e) a school community has a right to information concerning the performance of its school;
- (f) a parent of a student and the student has a right to access information about the student's achievement.

## CHAPTER 2—SCHOOL EDUCATION

### PART 2.1—COMPULSORY EDUCATION

#### Division 1—Attendance at School

##### 2.1.1 Attendance at school

It is the duty of the parent of a child of not less than 6 nor more than 17 years of age -

- (a) to enrol the child at a registered school and to ensure the child attends the school at all times when the school is open for the child's instruction; or
- (b) to register the child for home schooling in accordance with the regulations and to ensure that the child receives instruction in accordance with the registration.

##### 2.1.2 Parent must comply with duty

A parent of a child of compulsory school age must not without reasonable excuse fail to comply with the duty set out in section 2.1.1

##### 2.1.2A Offence for parent not to provide instruction to child registered for home schooling

A parent of a child registered for home schooling in accordance with the regulations must not without reasonable excuse fail to ensure that the child receives instruction in accordance with the registration.

Penalty: 1 penalty unit for each day on which the duty is not complied with.

##### 2.1.3 What is a reasonable excuse?

Without limiting section 2.1.2, section 2.1.2A and Division 3 it is a reasonable excuse for the purposes of those sections, in relation to a child if—

- (a) the child has been prevented from attending school or receiving instruction because of—
  - (i) illness, accident, an unforeseen event or an unavoidable cause; or
  - (ii) a requirement to comply with another law;
- (b) there is no Government school within a prescribed distance of the child's residence and the child is receiving a distance education program through a registered school; [the prescribed distance is set by the Regulations as 3 kilometres if the child under 9 years of age and 5 kilometres for a child of 9+]
- (c) the child is participating in education or training, or employment, or both, in accordance with an Order made by the Minister for the purposes of this paragraph;
- (d) the child has been suspended or expelled from a registered school and is undertaking other educational programs provided by the Department or another registered school;
- (e) the absence from school or instruction was because of the child's disobedience and was not due to any fault of the parent;
- (f) the child is attending or observing a religious event or obligation as a result of a genuinely held belief of the child or a parent of the child;
- (fa) the parent of the child has provided another excuse for the failure and the principal of the school accepts the excuse as a reasonable excuse;
- (g) the child is exempted from enrolment at school, attendance at school or both enrolment and attendance at school by the Minister under section 2.1.5.

## **Division 2—Enforcement of attendance**

### **2.1.7 Appointment of school attendance officers**

The Minister may in writing appoint a person employed under the Public Administration Act 2004 as a school attendance officer for the purposes of this Act.

### **2.1.8 Identity card**

- (1) The Minister must issue an identity card to each school attendance officer.
- (2) An identity card must contain a photograph of the school attendance officer to whom it is issued.

### **2.1.9 Production of identity card**

A school attendance officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Part, other than a power under Division 3; or
  - (b) at any time during the exercise of a power under this Part, other than a power under Division 3 if asked to do so.
- Penalty: 10 penalty units.

### **2.1.10 Powers of school attendance officers**

- (1) If a school attendance officer has reasonable grounds to believe that a child who is apparently of compulsory school age does not attend a registered school during school hours on a school day, the school attendance officer may stop the child in the street or a public place and ask the child for his or her name and address.
- (4) a school attendance officer is authorised to access, use or disclose information recorded in the Student Register for the purpose of carrying out the officer's functions and powers under this Part.
- (5) An authorisation under subsection (4) is taken to be an authorisation by the Secretary under section

5.3A.9 for the purpose of monitoring and ensuring student enrolment and attendance.

### **2.1.11 Offence to hinder or obstruct school attendance officer**

A person must not wilfully obstruct, hinder or interfere with a school attendance officer in the performance or exercise of his or her duties under this Part.

Penalty: 60 penalty units.

### **2.1.12 Power to bring proceedings**

A school attendance officer may bring proceedings for any offence under Division 1 or Division 3.

### **2.1.13 Certificate to be evidence as to attendance of child**

A certificate purporting to be under the hand of the principal of a registered school stating that a child is or is not attending that school or stating the particulars of attendance of a child at that school is evidence of the facts stated in the certificate.

### **2.1.14 Onus of proof**

In any proceeding in relation to an offence under section 2.1.2 the burden of proving the grounds of an excuse lies on the accused.

## **Division 3 – School enrolment notices and school attendance notices**

### **2.1.15 School enrolment notice**

- (1) This section applies if a school attendance officer, after making enquiries, has reasonable grounds to believe that a child of compulsory school age is not, at the time of making the enquiries, enrolled at a registered school and is not registered for home schooling in accordance with the regulations.
- (2) A school attendance officer may issue a school enrolment notice to a parent.
- (3) For the purposes of subsection (1), the enquiries made by the school attendance officer may include—
  - (a) ascertaining whether the child is registered for home schooling on the State Register;
  - (b) ascertaining whether the child is included on the Student Register and ascertaining any details contained on the Student Register regarding the child;
  - (c) ascertaining whether the child is included on the register of students kept by the child's designated neighbourhood Government school.

### **2.1.17 Content of school enrolment notice**

A school enrolment notice must be in the prescribed form and include the following –

- (a) the full name and address of the parent to whom the notice is addressed;
- (b) the full name and date of birth of the child to whom the notice relates;
- (c) a statement that the notice may be complied with by enrolling the child at a registered school or registering the child for home schooling in accordance with the regulations;
- (d) a request that the parent complete the reply form forwarded with the notice;
- (e) the date by which the parent must respond to the notice; being a date no less than 21 days after the date of the notice.

### **2.1.19 Parent must respond to school enrolment notice**

A parent who has received a school enrolment notice must—

- (a) complete the reply form forwarded with the notice by stating in it—
  - (i) the true reason why the child is not enrolled at school; or
  - (ii) that the child has been enrolled or conditionally enrolled at a registered school or registered for home schooling in accordance with the regulations, and details of the enrolment or registration; or
  - (iii) that the parent is unable to provide a reason because the parent does not have parental responsibility for the child within the meaning of the Family Law Act 1975 of the Commonwealth; and
- (b) sign the reply form; and
- (c) post or deliver the form so as to reach the school attendance officer no later than the date specified in the notice.

**2.1.21 Offences for failing to comply with school enrolment notice or school attendance notice**

- (1) A person who has received a school enrolment notice must respond to the notice in accordance with section 2.1.19.  
Penalty: 5 penalty units.
- (3) A person who responds to a school enrolment notice but fails to provide a reasonable excuse as to why the child is not enrolled in a registered school or registered for home schooling in accordance with the regulations is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

**2.1.22 Offence to provide false information**

A person who responds to a school enrolment notice or school attendance notice must not give any information in the reply form that the person knows is false or misleading in a material detail.

Penalty: 5 penalty units.

**2.1.23 Infringement notices, penalties and offences**

- (1) A school attendance officer may serve an infringement notice on a person who the school attendance officer has reason to believe has committed an offence against section 2.1.21.
- (2) An offence against section 2.1.21 is an infringement offence within the meaning of the Infringements Act 2006.
- (3) The infringement penalty for an offence against section 2.1.21 is 0.5 penalty units.

**2.1.24 Minister may issue guidelines**

- (1) The Minister may from time to time issue guidelines about—
  - (a) matters relating to measures that may be undertaken to encourage and support the enrolment of a child;
  - (b) matters relating to measures that may be undertaken to improve a student's attendance at school.
- (2) Any guidelines issued must not be inconsistent with this Act or the regulations.
- (3) The guidelines may apply, adopt or incorporate any matter contained in any document issued or published by a body or person whether—
  - (a) wholly or partially or as amended by the guidelines; or
  - (b) as issued or published at the time that the guidelines are issued or at any time before then; or
  - (c) as amended from time to time.

- (4) The regulations may require a person, body or school to comply with any guidelines issued under this section.

**CHAPTER 4 VICTORIAN REGISTRATION AND QUALIFICATIONS AUTHORITY**

**4.2.2 Functions of Authority**

- (1) The functions of the Authority are to -...
  - (b) register students for home schooling;...
  - (g) exercise the powers of the Authority to ensure that minimum standards are maintained -
    - (ii) in home schooling;

**4.2.3 Powers of Authority**

- (1) For the purpose of performing its functions, the Authority has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

**4.2.7 Delegation of Authority's power**

[provision for Authority to delegate its powers]

**Division 2 -Registration of students for home schooling**

**4.3.9 Authority to register students for home schooling**

The Authority may -

- (a) register a student for home schooling in accordance with the regulations; and
- (b) cancel the registration of a student for home schooling if -
  - (i) the parents of the student or the student refuse permission to authorised officers of the Authority to review the educational program, material or other records used for or related to the home schooling of the student to determine whether the requirements of the registration or the regulations relating to home schooling are being complied with; or
  - (ii) the parents or the student fail to comply with the requirements of the registration or any regulations relating to home schooling.

**PART 4.7 OFFENCES**

**4.7.1 Unregistered schools**

A person must not carry on or conduct a school unless the school is registered under Part 4.3

Penalty: 10 penalty units

**4.7.11 False or misleading information**

A person must not knowingly in purported compliance with this Act or the regulations—

- (a) give information or make a statement that is false or misleading in a material particular to the Authority; or
- (b) produce a document that is false or misleading in a material particular to the Authority without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units

of a body corporate

#### **PART 4.8 – REVIEW BY VCAT**

- (1) A person whose interests are affected by any of the following decisions of the Authority may apply to VCAT for review of the decision—
  - (a) not to grant registration under Part 4.3; or
  - (b) to suspend or cancel registration under Part 4.3;
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

#### **PART 4.9 – INFORMATION AND EVIDENCE**

##### **4.9.1 Publication of registers**

- (2) The Authority must ensure that no details of students registered for home schooling under Part 4.3 are published on the website under subsection (1) or made available to the public.

##### **4.9.4 Information may be made available**

- (1) The Authority may disclose any information it has obtained in the course of performing its functions or exercising its powers under this Chapter to a prescribed person or body if the information relates to the performance of a function of that person or body. [This allows for Centrelink to be informed of whether you are a registered homeschooler or not and therefore eligible for certain payments.]

### **CHAPTER 5: ADMINISTRATION**

#### **Division 2—Victorian student numbers and the Student Register**

##### **5.3A.3 Requirements for allocation or verification of Victorian student numbers**

- (2) The Authority must, at the time of registering a student for home schooling, apply to the Secretary—
  - (a) to allocate a Victorian student number to the student; or
  - (b) if a Victorian student number has previously been allocated to the student, to verify that number.

##### **5.3A.7 Secretary must establish Student Register**

The Secretary must establish and maintain a Student Register containing the following information received by the Secretary under this Part relating to any student allocated with a Victorian student number—

- (a) the student's Victorian student number;
- (b) the student's full name;
- (c) the student's date of birth;
- (d) the gender of the student;

- (e) the date of enrolment of the student by an education or training provider or registration of the student for home schooling (as the case requires);
- (f) the date of cancellation of enrolment of the student by an education or training provider or cancellation of registration of the student for home schooling (as the case requires).

#### **Division 3—Access, use or disclosure of Victorian student numbers and related information**

##### **5.3A.9 Authorisations for use of Victorian student numbers or related information**

- (1) The Secretary may authorise any of the following persons, bodies or classes of person or body to access, use or disclose one or more Victorian student numbers or related information—
  - (b) the Victorian Registration and Qualifications Authority;
  - (e) the date of enrolment of the student by an education or training provider or registration of the student for home schooling (as the case requires);
  - (f) the date of cancellation of enrolment of the student by an education or training provider or cancellation of registration of the student for home schooling (as the case requires).
- (2) An authorisation under subsection (1) may authorise the access, use or disclosure of one or more Victorian student numbers or related information for any or all of the following purposes—
  - (a) monitoring and ensuring student enrolment and attendance;

#### **5.8—ENFORCEMENT**

##### **5.8.3F Searches of premises to monitor compliance with a relevant law**

- (4) An authorised officer may not exercise any power under this section in relation to premises used or used mainly as residential premises, except with the consent of the occupier. [ie. No one from the VRQA or Ed Dept has the right to enter your home without permission.]

##### **5.8.5 Authority to provide information to school attendance officers**

The Authority must, on the request of a school attendance officer, provide the officer with any information relating to the registration of students for home schooling that the officer may reasonably require for carrying out the officer's functions and powers under Part 2.1

# REGULATIONS RELEVANT TO HOME EDUCATION

*Education and Training Reform Regulations 2007* run to 139 pages, we have reproduced those relevant to home education. Note that these regulations expire on 26 June 2017.

## PART 6—HOME SCHOOLING

### Division 1—Application for registration for home schooling

#### 65 Application for registration

- (1) A parent of a child may apply to the Authority to register the child for home schooling if the child is or will be of compulsory school age during any part of the year in which he or she is registered.
- (2) An application for registration for home schooling must—
  - (a) be in the form of Schedule 6; and
  - (b) be signed by the parent who will be responsible for the home schooling of the child; and
  - (c) be accompanied by evidence of the child's date of birth.

#### 66 Notice of decision regarding registration for home schooling

- (1) The Authority must notify an applicant for registration of a child for home schooling of the Authority's decision in relation to the application.
- (2) The notice must—
  - (a) be in writing; and
  - (b) if applicable, set out the date of registration of the child for home schooling; and
  - (c) be given within 14 days after the Authority receives the application in accordance with regulation 65.

#### Note

No fee is payable for the registration of a child for home schooling.

#### 67 State Register

The Authority must ensure that the following details regarding a child registered for home schooling are contained in the State Register—

- (a) the name, address and date of birth of the child; and
- (b) the name and address of the parent responsible for the home schooling of the child; and
- (c) the date of registration of the child.

#### Note

Section 4.9.1(2) of the Act prohibits the details of students registered for home schooling from being made public.

### Division 2—Requirements of registration for home schooling

#### 68 Requirements of instruction in home schooling

It is a requirement of registration of a child for home schooling that the child must receive regular and efficient instruction that:

- a) taken as a whole, substantially addresses the following learning areas:
  - (i) The Arts;
  - (ii) English;

- (iii) Health and Physical Education (including Sport);
- (iv) Languages other than English;
- (v) Mathematics;
- (vi) Science;
- (vii) Studies of Society and Environment;
- (viii) Technology; and

(b) is consistent with the principles underlying the Act, being the principles and practice of Australian democracy, including a commitment to—

- elected Government;
- the rule of law;
- equal rights for all before the law;
- freedom of religion;
- freedom of speech and association;
- the values of openness and tolerance.

#### 69 Requirement to notify Authority of changes to details in application

It is a requirement of registration of a child for home schooling that the parent responsible for the home schooling of the child must notify the Authority in writing without delay of any changes to the information provided to the Authority in the application for registration for home schooling under regulation 65.

#### 70 Requirement to notify Authority annually of continuation of home schooling

It is a requirement of registration of a child for home schooling that the parent responsible for the home schooling of the child must notify the Authority in writing before 30 November each year as to whether the child is to be home schooled in the following year.

#### 71 Requirement to notify Authority if child ceases to be home schooled

It is a requirement of registration of a child for home schooling that, if the child ceases to be home schooled, the parent responsible for the home schooling of the child must notify the Authority in writing of this within 14 days after the child ceases to be home schooled.

### Division 3—Cancellation of registration for home schooling

#### 72 Cancellation of registration

If the Authority is notified in writing by the parent responsible for the home schooling of a child that the child is no longer being, or to be, home schooled, the Authority must cancel the registration of the child for home schooling—

- (a) if the child has ceased to be home schooled, on the date of receipt of the notice; and
- (b) in any other case, on the date that the notice states that the home schooling of the child is to cease.

#### 73 Notification of cancellation of registration

The Authority must notify the parent responsible for the home schooling of a child in writing of the cancellation of the registration of the child for home schooling.

*The Education and Training Reform (School Attendance) Regulations 2013 prescribe the format of a School enrolment notice as follows:*

## **SCHEDULE 1**

Regulation 4

### **SCHOOL ENROLMENT NOTICE**

[Date of notice]

Child's Details: [full name, date of birth]

Parent's Details: [full name, home address]

To: [full name of parent]

The Department's records show that your child, [child's full name], has not been enrolled at a registered school or registered for home schooling as at [insert date of notice].

You are required to send us a reply form with one of the responses below by [insert due date which must not be less than 21 days after the date of the notice].

NOTE: You may comply with this notice by enrolling or conditionally enrolling your child at a registered school, or by registering your child for home schooling. If so, you must still send us a reply form, using option 3 below.

*Signature of school attendance officer:*

#### **OPTION 1**

My child is not enrolled or conditionally enrolled at a registered school or registered for home schooling because:

NOTE: If this reason is considered to be a reasonable excuse, no further action will be taken. If this reason is not considered to be a reasonable excuse, an infringement notice may be sent to you.

#### **OPTION 2**

I am unable to respond to this notice because I do not have parental responsibility for the child.

The parent who has parental responsibility for the child is [full name and address of nominated parent].

#### **OPTION 3**

I have enrolled/conditionally enrolled [name of child] at a registered school/registered [name of child] for home schooling and the details of that enrolment/registration are:

*Signature of Parent:*

NOTE:

The **Education and Training Reform Act 2006** provides that it is an offence to provide false information in reply to this notice.

You must post or deliver the completed reply to reach [school attendance officer contact details] by [insert due date which must not be less than 21 days after the date of the notice].

If you do not complete and return this form by the due date an infringement notice may be sent to you.

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