

TEACH Bulletin

Thorough Education Achieved in a Caring Home

Number 13

February 1998

Make YOUR Submission a Priority

Submissions to the Science and Education Select Committee on the Education Legislation Amendment Bill close on the 27th of February. In order to encourage the readers of TEACH Bulletin to make a submission, this issue is almost wholly given over to a summary of the issues. The presentation is a bit rough, and for this the editor apologises. But time is the main consideration in this case.

New Zealand is a Parliamentary Democracy. That means it is a form of representative democracy. That means that not only do we elect representatives to act more-or-less on our behalf in running the civil government of this country, but that we also have direct access ourselves to the legislative processes. We do this in various ways. One is by making submissions. The Parliamentary Select Committees, which fine tune the legislation before it is finally debated and voted upon by Parliament, are obliged to ask for public submissions for the very reason that this is a representative democracy.

It is part of every voter's responsibility: because we live in a democracy, our individual voices are needed to give our democracy its credibility, for without our voices, it ceases to be a democracy!

Each of us is free to speak or not to speak. If we choose not to speak, that's fine. But it had better be a conscious choice not to speak, rather than a total ignorance of what is going on. One could illustrate by saying the pop-

ulation is made up of three types of people: those who make things happen (they speak); those who watch things happen (they choose not to speak); and those who ask, "What happened?"

Those who speak on the issues must further realise that sometimes their voices clearly influence the proceedings, and sometimes they seem to have no effect. That's just the way it works. In this world, we cannot have our own way everytime.

So we have a responsibility to exercise our right to make representation by way of a submission. (This

idea that we "exercise" our rights is significant: if we do not, our rights will, just like an unexercised muscle, atrophy away and become useless.)

To provide a basis for submissions, the following items are presented to TEACH readers:

Page 3: Section 21 of the present law regarding home education from the Education Act 1989.

Pages 4 & 5: Sections 323 through 328 of the present law (Education Act 1989) regarding powers of ERO officers to conduct reviews.

Page 5: Clauses 59 & 60 of the Education Legislation Amendment Bill currently before the Science and

(Continued on page 2)

TEACH Leadership Forum Highly Productive

Thirty-three delegates (plus their 43 children!) representing at least 15 home education organisations and coming from 19 different population centres from North Shore to Christchurch converged upon Palmerston North over the two sweltering days of 5-6 February to discuss issues of concern to home educators nation-wide.

There were three major areas of concern: reviews, the Education Legislation Amendment Bill, and communication issues.

Tony Cross from the ERO spoke to the Forum on Thursday evening. He was joined by Jenny Clarke, the public relations officer from ERO head office in Wellington. As many of the delegates had met with Mr Cross before and as the delegates had had most of the day discussing various aspects of

the current review process, Mr Cross came in for a very lively time of questions and answers!

ACT Party Member of Parliament Donna Awatere Huata was the guest speaker on the Friday morning, Waitangi Day. She described much of her family life, which included a fair bit of home education! Her heartfelt, unfettered and straight-shooting remarks about the damage done to families by Social Welfare policies and practises, and about the low concern policy makers in general have for the health of the nuclear and extended family networks of this country, endeared her to us all.

The Forum broke into smaller buzz groups, each one discussing different aspects of the Education Legislation Amendment Bill. The

(Continued on page 2)

TEACH Bulletin

is a monthly publication of TEACH Publications, and is concerned with those things which may impact on home educators. Articles will deal with political developments, statist and professional trends, correspondence with educationalists, and other items of general interest to home educators. There is also a regular opinion poll regarding educational issues of the day that may impact home schoolers.

TEACH Bulletin is available for a subscription of \$16 per year for 11 issues (none in December), or by becoming a member of TEACH for a donation of \$30 or more. Some of the benefits of membership are:

- Discounts on Christian Home Schoolers of NZ National Family Conference fees.
- Discounts on TEACH National Leadership Forum fees.
- Coaching on how to participate in the Parliamentary process via letter writing, making submissions, lobbying MPs, etc.
- An annual free gift.
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- Discounts on Sunshine Educational coach tours.
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All correspondence to:

The Editor
Craig S. Smith
4 Tawa St.
Palmerston North 5301
New Zealand
Ph/Fax: +64 6 357-4399
keystone.teach@xtra.co.nz

Hear, my son, your father's instruction, and reject not your mother's teaching.
— Proverbs 1:8

Submission

(Continued from page 1)

Pages 6 & 7: Letter to the Attorney General about possible illegality of reviews as they are currently being performed.

Pages 8-10: Example of a submission on the Amendment Bill.

You need to send 20 copies of your submission to: Science and Education Select Committee, Parliament Buildings, Wellington.

Readers please note:

Neither the letter to the Attorney General nor the submission are meant to be taken as legal advice. Although based on the cumulative ideas of the

TEACH Leadership Forum of 5-6 February, these two have been re-worked and expanded by the Editor into their present form. These documents represent informed personal opinion. For legal advice readers are encouraged to consult a lawyer/barrister/solicitor.

Although everyone is encouraged to make a submission, no matter how informal its presentation, the submission must be written from an informed position. That is, you must be reasonably familiar with the issues involved and the relevant legislation. Be sure you know what you are talking about before writing. The material on the following pages is offered as information and ideas which may be helpful in formulating one's own personal opinions and ideas.

Forum

(Continued from page 1)

combined efforts and ideas culminated in a joint submission from the Forum participants on the Bill. In addition it was felt necessary to send a joint letter to the Attorney General expressing concern over the possible illegality of reviews as they are presently being carried out.

Networking among home educators of all philosophical persuasions, communicating with MPs and government agencies, and developing public relations with the media and the community at large

were all discussed with great vigour. One of the aspects of the Forum which was so greatly appreciated by all was the desire to "agree to disagree" when necessary and get back to the issues of common concern.

The delegates departed very much fired up to strengthen the links formed and to forge new ones, to raise the political consciousness among their respective support groups, and to encourage all and sundry to make a submission on this Education Legislation Amendment Bill.

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21. Long term exemptions from enrolment—(1) An employee of the Ministry designated by the Secretary for the purpose (in this section and section 26 of this Act referred to as a designated officer) may, by certificate given to a person's parent, exempt the person from the requirements of section 20 of this Act,—

(a) On the parent's application; and

(b) If satisfied that the person—

(i) Will be taught at least as regularly and well as in a registered school; or

(ii) In the case of a person who would otherwise be likely to need special education, will be taught at least as regularly and well as in a special class or clinic or by a special service.

(2) A certificate under subsection (1) of this section continues in force until revoked under this section.

(3) If a designated officer refuses to grant a certificate under subsection (1) of this section, the applicant parent may appeal to the Secretary who, after considering a report on the matter from the Chief Review Officer, shall confirm the refusal or grant a certificate.

(4) The Secretary's decision is final.

(5) Every certificate under subsection (1) or subsection (3) of this section shall state why it was given.

(6) Subject to subsection (7) of this section, the Secretary may at any time [revoke] a certificate under subsection (1) or subsection (3) of this section.

(7) The Secretary shall not revoke a certificate under subsection (1) or subsection (3) of this section, unless, after having—

(a) Made reasonable efforts to get all the relevant information; and

(b) Considered a report on the matter from the Chief Review Officer,—

the Secretary is not satisfied of whichever of the grounds specified in subsection (1)(b) of this section the certificate was originally granted on.

[PART XXVIII]

[REVIEW OF EDUCATIONAL SERVICES]

[823. Interpretation]—In this Part of this Act, unless the context otherwise requires,—

“Applicable organisation” means an institution that provides an applicable service;

“Applicable person”, in relation to an applicable organisation, means any body or person who or that administers, controls, governs, manages, operates, or owns, the organisation;

“Applicable service” means an educational service to which this Part of this Act applies;

“Chief Review Officer” means the chief executive of the Education Review Office;

“Minister” means the Minister of State who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part of this Act;

“Review officer” means a person for the time being designated under section 326 of this Act; and includes the Chief Review Officer.

[824. Educational services to which Part applies]—This Part of this Act applies to every educational service (other than a service provided only to or for people over 16 who are not enrolled at a state school within the meaning of section 2 (1) of this Act)—

(a) That is provided by an organisation—

(i) Owned or operated by the Crown; or

(ii) Forbidden by law to provide that service (or a service of that kind) unless it holds a licence, permit, or other authority issued by or on behalf of the Crown; or

(b) Whose provision is (wholly or partly)—

(i) Funded by public money appropriated by Parliament; or

(ii) Regulated by or under statute.

[825. Chief Review Officer to perform certain functions]—The Chief Review Officer shall—

(a) Administer—

(i) When directed by the Minister to do so; or

(ii) Notwithstanding section 32 of the State Sector Act 1988, of the Chief Review Officer's own motion,—

reviews, either general or relating to particular matters, of the performance of applicable organisations in relation to the applicable services they provide; and

(b) Administer the preparation of reports to the Minister on the undertaking and results of such reviews; and

(c) Give the Minister such other assistance and advice on the performance of applicable organisations as the Minister from time to time requires.

[826. Review officers]—The Chief Review Officer may designate any suitably qualified person (whether or not an employee of the Chief Review Officer) a review officer; and shall ensure that every person for the time being so designated has a certificate to that effect, in a form approved by the Chief Review Officer.

[827. Powers of entry and inspection]—For the purposes of enabling any functions of the Chief Review Officer to be performed, any review officer may, at any reasonable time and having given reasonable notice to an applicable organisation or any applicable person of the organisation, enter any place (other than a dwellinghouse) occupied by the organisation or person, and—

(a) Conduct inspections or inquiries;

(b) Require any person to produce documents or information relating to—

(i) An applicable service that the organisation provides; or

(ii) People to whom such a service is (or has been) provided,—

and permit the review officer to make copies or extracts of the documents or information;

(c) Require any applicable person of the organisation, or any other person—

(i) Employed by the organisation or any applicable person of the organisation; or

(ii) Involved in the management of the organisation,—

to make or provide statements, in any form and

manner the review officer specifies, about any matters relating to an applicable service:

- (d) Inspect the work of any person to whom an applicable service is (or has been) provided;
- (e) Meet and talk with any person to whom an applicable service is being provided.

[328. Review officers to prove identity—Every review officer who enters any place under the authority of section 327 of this Act shall, on first entering and, if requested, at any later time, produce to the person apparently in charge the review officer's certificate of designation.]

Review of Educational Services

59. Educational services to which this Part applies—

Section 324 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) This Part also applies to educational services provided to a student who has an enrolment exemption under section 21."

60. Powers concerning education services provided to persons with enrolment exemption—The principal Act is amended by inserting, after section 327, the following section:

"327A. (1) Sections 325, 326, and 328 apply to educational services provided to a person who has an enrolment exemption under section 21 as if the person providing the services were an applicable organisation.

"(2) For the purposes of enabling any functions of the Chief Review Officer to be performed in relation to an educational service provided to a person who has an enrolment exemption under section 21, a review officer may, at any reasonable time and having given reasonable notice, do all or any of the following:

"(a) Conduct inspections or inquiries;

"(b) Require any person to produce documents or information relating to—

“(i) The service that the person provides; or

“(ii) People to whom the service is (or has been) provided,—

and permit the review officer to make copies or extracts of the documents or information;

"(c) Require any person to make or provide statements, in any form and manner the review officer specifies, about any matters relating to the service;

"(d) Inspect the work of any person to whom the service is (or has been) provided;

"(e) Meet and talk with any person to whom the service is being provided.

10 " (3) Nothing in subsection (2) confers on a review officer the power of entry referred to in section 327."

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12 February 1998

Hon Douglas Graham
Attorney-General
Parliament Buildings
Wellington

Dear Mr Graham,

I wish to draw your attention to what appears to be a practise outside the provisions of the Education Act 1989 currently employed by the Ministry of Education.

Although Section 20 of the Education Act 1989 requires all children aged six through to 16 to be enrolled in a registered school, there are those who have received certificates of exemption from such enrolment at registered schools. These exemptions are granted by the Secretary for Education under Section 21 of the Act. The exemptions are not granted unless the Secretary is "satisfied that the person will be taught at least as regularly and well as in a registered school" [Section 21(1)(b)(i)].

According to Section 21(6) & (7) the one occasion upon which the Secretary may order a Review by the Education Review Office of a person holding a certificate of exemption is when the Secretary intends to revoke the certificate.

The Education Review Office is currently conducting a general review of all holders of exemption certificates. Although Section 325(a) of the Act gives the Chief Review Officer the authority to conduct general reviews, this section evidently does not apply to holders of exemption certificates. (That authority is currently being sought via Clauses 59 & 60 of the Education Legislation Amendment Bill presently before the Select Committee.)

Information I have had from the ERO itself is that these reviews have been ordered by the Ministry of Education as if the Secretary intended to revoke all the exemptions. The reviews are especially targeting the most recently issued exemptions of at least six months ago.

Surely it is a nonsense for the Secretary to issue exemption certificates because he is satisfied the children will be taught at least as regularly and well as in a registered school and then six months later investigate all such exemptions with the intention of revoking them. This must especially be so since Section 21 of the Act under which the exemptions are granted is entitled, "Long term exemption from enrolment".

The context in which this practise is taking place makes one rather cynical of the motives behind it all. In January of 1997 the Hon Brian Donnelly, Minister Responsible for the ERO, announced that regular reviews of home educators would soon begin. When I spoke to Mr Donnelly on the phone he confirmed to me that this was one of the agreements he had managed to get through the coalition talks with the National Party in order to form a Government. In July 1997 when the Budget was announced, there among the provisions was \$1.4M for the review of all holders of exemption certificates by the ERO. An official within the ERO has told me that the reason Clauses 59 & 60 are in the Education Legislation Amendment Bill is so that the ERO can legally do blanket reviews of all home educators (the same as they do with registered

schools), rather than be restricted to doing reviews of only those home educators specifically indicated by the Secretary for Education.

I hope I am not out of line, but it seems to me that either this current practise of doing blanket, general reviews of home educators (holders of exemption certificates) is either an illegal practise or else it is an abuse of the Secretary's powers to call for reviews to be done. The MOE and the ERO appear to be acting as if Clauses 59 & 60 of the Education Legislation Amendment Bill were already in force. If it is an improper practise, then the MOE is also in breach of Privacy Principle 11 of the Privacy Act. This does not inspire confidence in either agency. It tends to make one cynical.

What seems of even greater concern is that any review carried out by the ERO in the home of any home educator appears to be in breach of the Act. Although Section 21(7) allows the Secretary to call for a review of an exemption certificate, Section 327 says that "any review officer may...enter any place (other than a dwellinghouse)". Does this not say that review officers are specifically forbidden to enter private homes in order to conduct reviews?

Could you please investigate this matter and take the necessary steps to bring any offenders into line. If indeed I am in error due to a misunderstanding of the law, then I would greatly appreciate a correcting explanation.

Yours faithfully,

Craig S. Smith

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12 February 1998

**Submission
to the
Science and Education Select Committee
on the
Education Legislation Amendment Bill**

This submission is concerned only with Clauses 59 & 60 of the bill.

Clause 59 seeks to amend the Act so that all the provisions of Part XXVIII of the Act, entitled "Review of Educational Services", apply to those who have received certificates of exemption from enrolment at registered schools. Lines 27 to 30 of Clause 60 seek to amend the Act so that those providing education under exemption certificates are to be considered in the same manner as "an applicable organisation". Section 323 of the Act defines "applicable organisation" as "an institution". The result of these two proposed amendments is to take families who have gained exemptions from enrolling their children in registered schooling institutions and treating their homes and families as if they were themselves schooling institutions.

1. This is illogical since home educators apply for an exemption from enrolment for the very purpose of getting away from the institutionalised nature of registered schools.
2. This is against natural justice as the schooling that takes place in registered schooling institutions cannot be reviewed on the same basis as the education that takes place in the context of private homes. The two set-ups have virtually no common ground for the following reasons:

	Registered Schools	Home Education
A	Institution created by statute.	More fundamental unit than even the state that wrote the statute.
B	Institution acting on behalf of parents.	The parents acting on their own behalf.
C	Institution of compulsion.	Completely voluntary.
D	Mass classroom instruction.	Individual private & personal tutoring.
E	Required to follow National Curriculum.	Free to follow any curriculum.
F	Funded almost entirely by the state.	May elect to receive small allowance.
G	Must be certified and licensed to operate.	Have needed neither throughout the whole of New Zealand's history.
H	Top administrators are career politicians.	Run by the family unit.
I	Administration, curriculum development and content, teacher training, learning objectives and/or outcomes, and student certification are all subject to political considerations, public funding issues and special interest lobby groups.	These things are all functions of the family's personal worldview: their educational, social, religious and philosophical values.

3. There will be a drastic change in the relationship between the ERO and the MOE on the one hand and holders of exemption certificates on the other.

a) At present, the Chief Review Officer does not have the authority to conduct a general review of home educators because the phrase "other than a dwellinghouse" in Section 327 does not allow it, and because according to Section 21(6) & (7) of the Act, it is the Secretary for Education who has to order reviews by the ERO and then only if the Secretary's intention is to revoke the exemption certificates.

b) Clause 60 will cause Section 325 of the Act to apply to home educators --i.e. "The Chief Review Officer shall administer...of the Chief Review Officer's own motion, reviews, either general or relating to particular matters" -- thus giving the Chief Review Officer complete authority to conduct general reviews of all home educators without reference to the Secretary for Education.

c) Section 21 of the Act causes the prospective home educator to "satisfy" the Secretary for Education that he or she will teach his or her children "at least as regularly and well as in a registered school" [S21(1)(b)(i)]. Clauses 59 & 60 of the bill will cause the prospective home educator to additionally seek to satisfy the Chief Review Officer, since that person will be able to review home educators on his or her own authority.

One is an education agency, the other an audit agency. Home educators will be put into the situation of having to serve two masters who hold quite divergent outlooks on the educational task. This is an unfair and unjust burden, especially considering that, in theory at least, the primary reason for the existence of both the MOE and the ERO is to help the parents educate the parents' children. Home educating parents, obviously, do not feel they need this help.

Lines 31 and following of Clause 60 of this Bill enumerate the powers of Review Officers in relation to reviewing home educators. Notwithstanding the specific withholding of the statutory power of entry into private homes, the powers enumerated remain excessive, intrusive and open to abuse from an over-zealous review officer.

1. According to proposed amendment 327A(2)(b) & (c) of Clause 60, a review officer does not need to enter the house of a home educator to still "require any person to produce documents...and permit the review officer to make copies or extracts of the documents" and "require any person to make or provide statements, in any form and manner the review officer specifies" (emphasis added).
2. The powers enumerated are open ended and totally inappropriate, unjust and unfair in the context of home educators for the following reasons:

	Reviews of Institutions	Reviews of Home Educators
A	One professional fronting a large institution is facing another professional fronting another large institution.	One professional fronting a large institution is facing a volunteer parent in the context of two of the most personal and intimate parts of her life: her home and her children.
B	The two professionals facing off deal only with impersonal information (in relation to themselves) about their respective institutions.	The professional remains on the superficial level while the parent is expected to reveal very personal and private information about her family and lifestyle.

In conclusion, it would seem to be against natural justice to classify and review home educators operating voluntarily with little state monetary support in the privacy of their own homes and according to the dictates of their own consciences; to treat such responsible families along the same officious and intrusive lines as state created, registered, and funded institutions which operate under the eye of the public, politicians and lobby groups.

Therefore, it is recommended that:

1. the amendment proposed in Clause 59 be amended itself by deleting the words "also applies" and replacing them with the words "does not apply" and by deleting the words "to educational services provided" so as to read as follows: "(2) This Part does not apply to a student who has an enrolment exemption under section 21."
2. Clause 60 of this bill be deleted completely.
3. the provisions of Section 21 of the Education Act, 1989, as it stands be regarded as a satisfactory and efficient mechanism for reviewing home educators.

Submitted by:

Craig S. Smith

National Director

Christian Home Schoolers of NZ, Inc.

4 Tawa St.

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ph/fax: (06) 357-4399

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