

# School Legislation in the ACT

Report to the ACT Minister for Education  
June 2000

# From the committee

June 26th, 2000

Mr Bill Stefaniak MLA  
Minister for Education

Dear Minister

We are pleased to present to you the Committee's report on its review of school legislation in the ACT. The report forms the basis of a way forward for a revision of the legislation that currently underpins school education in the Territory.


We, the undersigned members of the Committee, commend the report to you.



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# Terms of Reference

## 1 Introduction

School legislation in the ACT was to be revised to reflect current education and school governance thinking and to provide a basis for school education into the twenty first century.

The *ACT Education Act (1937)* is 63 years old and includes references to the *NSW Free Education Act (1906)* and the *NSW Public Instruction Act (1880)*. Both the latter acts have been repealed in NSW but are extant in the ACT, and should be read as part of the *ACT Education Act (1937)*.

The *ACT Schools Authority Act (1976)*, which covers the administration, financial management and governance of the ACT school system, was not designed for a self governing territory.

A School Legislation Review Committee was established to review the two acts and to provide advice to Government on the need for change.

## 2 Task

The Review Committee was to review the *ACT Education Act (1937)* and the *ACT Schools Authority Act (1976)* and advise the Minister for Education on:

- its view about the relevance of the Acts' existing provisions; and
- the key elements of legislation

needed to underpin high quality schooling in the ACT.

The Department of Education and Community Services was to obtain advice about the Territory's obligations pursuant to the Competition Principles Agreement and inform the Committee.

## 3 Outcomes

The Review Committee's report was to provide information and recommendations to assist Government in determining the form and content of legislation needed to replace the *ACT Education Act (1937)* and the *ACT Schools Authority Act (1976)*.

## 4 Scope of task

The Review Committee was required to do (but not be limited by) the following:

- develop and disseminate a discussion paper on the key issues to be considered in the review;
- invite submissions;
- consult on the key issues through a series of workshops;
- examine and report on existing state and territory legislation;
- take into account the objectives, maintenance of standards and

# Terms of Reference

management of school education in the ACT;

- look at closer relationships between the government and non-government systems;
- develop an options paper on the possible elements of new legislation, including objectives; and
- take into account the impact of other relevant ACT and Commonwealth legislation and agreements, including competition and regulatory review policies.

The Committee was to take into account the ACT Government Consultation Protocols.

## 5 Composition of committee

The Legislation Review Committee was chaired by Professor Don Aitkin, Vice Chancellor of the University of Canberra. Other members of the Committee were representatives from:

- ACT Council of Parents and Citizens Associations (two)
- School Board Forum
- Catholic Education Office
- ACT & Region Chamber of Commerce
- ACT Branch of the Australian Education Union
- Association of Independent

Schools of the ACT

- Association of Parents and Friends of ACT Schools

- Canberra Preschool Society

and the following department officers:

- Executive Director, Education & Training
- Executive Director, Sport & Corporate Resources

## 6 Timeframe

The timeframe for the review was:

- commence review – Sept '98
- progress report to Minister – Feb '99
- final report to Minister – Aug '99<sup>1</sup>

## 7 Administrative support

Meeting facilities, secretariat and research support were provided to the Committee by the Department of Education and Community Services.

<sup>1</sup> This date was subsequently extended to June 30, 2000

# Introduction

The government established the School Legislation Review Committee in September 1998, with Terms of Reference to consider the relevance of the ACT's legislation relating to schooling. The Committee was to advise government on the

- relevance of the Acts' existing provisions; and
- key elements of legislation needed to underpin high-quality schooling in the ACT.

One of the central requirements in the Terms of Reference was that a broadly-based consultation process underpin the Review. The Committee deliberated for some time over the key issues and then prepared a discussion paper to serve as a prompt and guide for community discussion and community debate. The consultation brought forward a rich pool of advice, observation, and support from parents, teachers, students, administrators, business, and the wider community.

The Committee's deliberations and recommendations are arranged into five sections:

- General Issues;
- Government School Education;
- Non-government Schooling;
- Preschooling; and
- Homeschooling.

Social changes and technological advances already foreshadow new challenges and new opportunities for high-quality learning opportunities. The consequences have not been explored deeply by governments anywhere, although all Australian jurisdictions, and several overseas, have begun to ponder the consequences of these changes for their existing legislation on schooling.

The Committee felt a strong obligation to ensure that, in giving advice to government, it protected the qualities that made for good legislation, including the need for our legislation to remain open enough – and flexible enough – to accommodate the world of schooling that will prevail in the 21st Century.

In providing its advice to government, the Committee took these broad trends into account and has defined a legal framework that will not inhibit the evolution of these changes or the opportunities for students that flow from them.

# Recommendations

## General Issues

### *Recommendation 1*

Establish a single Act for schooling in the ACT.

### *Recommendation 2*

Include a Statement of Values and Principles as a preamble to legislation for schooling in the ACT.

### *Recommendation 3*

Include additional statements of Values and Principles for the government and non-government sectors at the beginning of the relevant sections of the legislation.

### *Recommendation 4*

Consider the introduction of Teacher Registration for professional enhancement of teachers in the ACT.

### *Recommendation 5*

Include a statement about the government's commitment to the funding of ACT schooling in the general Preamble to the legislation.

### *Recommendation 6*

Maintain an obligation to provide comprehensive information about key inputs and outcomes in the ACT school system.

### *Recommendation 7*

Maintain the current compulsory school age thresholds.

### *Recommendation 8*

Include in the Values and Principles the goal that all students should complete the senior years of schooling with a broad general education, which covers both the academic and the vocational, and which prepares them for lifelong learning.

### *Recommendation 9*

Incorporate into the legislation a definition of attendance that reflects the evolving nature of schooling.

### *Recommendation 10*

Incorporate some basic principles about the management of student truancy, suspension and exclusion into the legislation.

### *Recommendation 11*

Incorporate the principles behind existing arrangements for curriculum into legislation.

### *Recommendation 12*

Allow formal ties between particular government and non-government schools to evolve.

### *Recommendation 13*

Assess the likely impact of Internet-based learning technologies on existing legislative provisions for schooling in the ACT.

## Government School Education

### *Recommendation 14*

Strengthen community involvement in educational decision-making at the system level for government schools.

### *Recommendation 15*

Amend existing legislative provisions for government school boards to make explicit the role of the principal and the curricular responsibilities of these boards.

### *Recommendation 16*

Make provision in the legislation for a general statement of, and policy in support of, parent participation in government schools.

### *Recommendation 17*

Maintain the provisions of the *NSW Free Education Act (1906)* in legislation for ACT schooling, and make explicit the provision for fee-paying international students in government schools.

### *Recommendation 18*

Make a statement in the legislation supporting needs-based funding components for government schools.

### *Recommendation 19*

Include in legislation the conditions under which schools may request voluntary financial contributions.

## Non-Government Education

### *Recommendation 20*

Retain current legislative provisions relating to the establishment and re-registration of non-government schools.

## Preschooling

### *Recommendation 21*

Remove mention of compulsory fees for government preschools from existing legislation.

### *Recommendation 22*

Review licensing arrangements for independent preschools attached to registered non-government schools.

## Homeschooling

### *Recommendation 23*

Retain current legislative provisions relating to homeschooling.



# The Consultation Process

The Discussion Paper for this review of legislation was circulated widely, with over 5,000 copies distributed between July and November 1999. Its purpose was to focus public comment and debate on the key issues for schooling in the ACT. The public consultation itself had three components:

- community information sessions which were open to the general public, and ultimately involved about 200 participants;
- special interest workshops, by invitation, which involved about 100 participants. One of the special interest groups was the Student Network, which demonstrated a very keen interest in the issues as well as the process itself; and
- public submissions, of which 80 were received.

The public information sessions produced a very wide range of ideas and opinions, probably because of the interaction that occurs when large numbers of participants gather together. The special interest workshops, by their nature, provided specific advice on a more limited range of issues.

Written submissions ranged from a focus on specific issues to comments on all of the questions posed in the

Paper, often with short Yes or No answers. Some were extensive and comprehensive and usually came from peak bodies representing a consolidated view from their constituents; others were single-page or single-issue contributions from individuals.

While the consultation process focused mainly on the topics in the public Discussion Paper, discussion around issues that had not been considered in the Paper provided additional valuable feedback to the Committee. As well, it was clear from many of the broad-ranging conversations during the public meetings that individuals were forming new, probably informal, networks within their particular area of interest in schooling. This networking has been one of the unintended but most positive outcomes of this consultation process. Finally, debate was at all times constructive, and frequently followed up with written submissions.

There is no doubt that the ACT community has a keen interest in education. Reaction to the public Discussion Paper was most positive, and many contributors at the public sessions and in the written submissions commented favourably on the process.

At the conclusion of the consultation

period, a short summary of the emergent themes, together with the submissions, was lodged in all ACT public libraries.

The consultation process made evident the high degree of consensus about how schooling is, and can be, provided in the ACT. The Committee has listened carefully to the community's advice which, not surprisingly, flowed from a range of opinions and aspirations. The Committee was impressed by the depth of thinking and clear commitment to schooling demonstrated by the ACT community. That there is such a high level of satisfaction is a clear indication that much of the current legislation has stood the test of time and remains appropriate for today's educational provisions.

There was little sign of either polarised views or deep-seated dissatisfaction apart from an almost universal concern about the levels of government funding provided for schooling in the ACT.

One of the key goals of this Committee has been to formulate its recommendations for possible changes to legislation, aware that any changes made at the beginning of the 21st century must stand the test of time and be relevant in the decades ahead.

The outcome is this Report, which represents the views of all members of the Committee.

# The World of Schooling

In developing this Report, the Committee has been committed to protecting and enhancing what it sees as most valuable in contemporary ACT schooling. At the same time, it was mindful that ACT schools will need to deal effectively with the changes that will challenge Australian society in the new century. The sources of these changes are familiar subjects in current public discussion and debate.

There are no certainties about the details of future trends but we know that they offer both challenges and opportunities to our schools. They are likely to raise expectations about what schools must deliver, and will continue to challenge schools on access and equity issues. They will also broaden the horizons of young people and introduce them to new ways of learning.

The Committee does little more than enumerate some of these trends here to indicate their scope and influence on schooling.

- **Globalisation**

The world will steadily become a smaller place, a process which will affect school populations, contexts and curricula. Local classrooms will soon be part of global classrooms, taking curriculum materials and learning resources as appropriate

from all parts of the globe, and communicating with people in other places as part of the learning environment.

Migration patterns and multinational employers are already creating complex multicultural communities everywhere, with schools under social and economic pressure to provide suitable learning experiences for their particular mix of students. This is an issue not only for ACT schools but also for our local students who go to live in other parts of the world.

- **Family structure**

The increasing diversity in family structures will place greater strains on schools, resulting in schools having an even wider range of social roles than is currently the case.

- **Work**

Most work will be knowledge-based and involve participation in teams. People will move from job to job much more commonly than has been the case until now, producing a growing imperative for life-long learning as a means of re-qualifying or upgrading. All occupations and professions will feel the pressure.

Students who do not complete

the full complement of schooling will have increased difficulty in finding employment, because of the declining availability of unskilled jobs that require a very limited education. Since the longest and most significant learning cycle will always be the K-12 years, our schools must offer a sound and broadly-based curriculum in order to sustain, and not inhibit, the learner's subsequent continuing education.

- **Wealth**

If current inequalities continue to increase, then school populations will vary in backgrounds and capacities to a greater degree than is already apparent. Issues of access and equity will continue to grow in importance.

- **Technology**

Advances in communications and information technologies make for many new learning experiences. For example, classes and materials drawn from the Internet might become commonplace; boundaries between schooling and work might become blurred, not only in the K-12 years but also in the cycle of life-long learning.

These trends represent challenges of the deepest kind to today's schools, for they must adjust. Historically, they have

always been responsible for transmitting the core of socially-approved knowledge and values from present to future generations. Since the introduction of universal education a century ago, they have effectively absorbed the constant waves of change that characterised the evolving social fabric.

The Committee is emphatic that it does not foresee a time when the importance of schools will diminish. On the contrary, it recognises the mounting pressure on schools to be not only the providers of knowledge, but also the transmitters of the social and moral codes of society, once the province of church and family. One of the central and unique characteristics of schools is their capacity to develop our young in settings involving multi-aged groups of children during a sustained period, involving not just days and months but years. The fundamental point is simply that when new pressures emerge, schools must be equipped to provide appropriate and relevant educational experiences to all young people.

Whatever the promise of technology, the common view of the Committee is that learning happens best in a social context and that learning to be a social being is an important part of a young person's development.

During the consultation phase, the ACT community showed that it understood these trends and was well-informed about them. Indeed, participants were keen that any new legislation should be workable for schools of the future. The quandary presented by established (or formal) school structures is already apparent in the view of the business sector, which believes that current arrangements might be inhibitors to students gaining employable skills in industry, through workplace training. Schools might need to be open for longer periods of time (over the day, the week, the year) to enable students to accommodate a range of learning patterns.

# What effect can legislation have on schooling?

The Committee believes it is necessary to say something about the relationship between legislation and schooling. The consultation process elicited more than one contribution suggesting that “all would be well if only the new Act made provision for [this or that practice or principle]”.

In fact, the greater part of what occurs in schools flows from long-established practices and traditions, the structure of the buildings themselves (and what they allow or inhibit), the past training and experiences of teachers, the aspirations of parents and communities, and an ever-changing body of knowledge.

Acts of Parliament can facilitate good schooling, but they cannot ordain it. Indeed, the fact that the ACT enjoys a

high-quality of schooling notwithstanding the fact that the two principal legislative instruments which underpin ACT schooling are plainly out of date makes this clear. But that is not to say that legislation is unimportant. A good act governing schools and schooling in the ACT will display a number of attractive characteristics.

First, it sets out the *objectives* of the Act clearly, and enables people to understand what it is intended to do. It should provide citizens and participants in the school system with a clear statement of values and objectives for schooling, and define in very broad terms:

- the organisation and operation of the school system;

- the responsibilities of government in the provision of schooling; and
- what can be expected from the school system.

A second characteristic of good legislation is its *focus* on what is highly prized by the community. Good legislation will also define the *supporting mechanisms* needed to promote and protect what the Act says is most precious. In Australian schooling, these values revolve around access and equity, fairness and safety. Although the legislation currently directing schooling in the ACT was promulgated in 1937 and 1976 respectively, the values expressed there remain relevant today.

During the deliberations of the School Legislation Review Committee, and in the preparation of the Discussion Paper, the Committee's focus was firmly on what it believed to be the key issues, the most important matters, for schooling in the ACT jurisdiction. The consultation processes confirmed that focus. The Committee's recommendations propose some additions to the existing legislative framework, but also indicate the wisdom of maintaining much of what is already in place legislatively.

A third feature is *endurability*, meaning that what is prescribed at one time should remain relevant at a later time.

Endurability is achieved through the thoughtful identification of "what matters most", together with a careful crafting of the legal expression of these important matters.

Endurable legislation *directs the vision* but avoids dictating the operational characteristics of schooling. To do the latter would render any legislation on schooling outdated or irrelevant in a short space of time, as new and better ways were found to run schools, manage student welfare, and decide on curriculum priorities.

Legislation does not (and cannot) directly influence many of the day-to-day engagements that are called learning and teaching, or student management, or community involvement. These matters are the domain of policies and procedures, developed to meet specific needs and modified as circumstances change.

# A Legislative Framework for Schooling in the ACT

It is frequently assumed that if a committee of review of schooling is set up, then something must be wrong in the school system. The Committee is glad to say that, funding levels apart, the school system is in good shape and that many in the ACT think so. The Committee does not propose radical changes to existing legislation for schooling in the ACT. It does, however, make recommendations to government about modifying several prevailing legislative conditions and about considering new approaches to the way schooling is provided. It must also be said that members' views often differed about the extent of change required to the legislation.

In the course of its review, the Committee was convinced that, in general, the community is comfortable with the way schooling occurs in the Territory. The exception was the matter of government funding, where almost universal concern was expressed by the community.

This is not to say that teachers, students or parents were completely satisfied with all other aspects of schooling, for they were not. In some cases, there was also a strong desire to use the legislation to extend the opportunities for parents, teachers, and

students to participate in the decision-making in, and about, schools. These themes have been given expression in this Report.

As well, many of the changes people wished to see were at the policy or administrative levels rather than at the legislative level. In some instances, the Committee found that formal policies already existed but, for whatever reason, were not well known to the community or perhaps not well understood. The message is that those engaged in providing education services in the ACT have to be vigilant to ensure that their community can get the information it wants, when it wants it or needs it.

The Committee is convinced that the coming decades will witness some profound shifts in the ways students learn, and has said so in this Report. Much of our present legislation on schooling assumes the existence of a traditional school. Internet-based learning technologies have the potential to make some of the traditional structures in schooling, such as courses, timetables, and teachers less location-dependent, particularly in the secondary years.

This government, and indeed governments worldwide, must monitor

and mould the influence of emerging alternatives for learning to encourage the right mix of traditional and virtual environments, protecting at the same time the community's deeply-held valuing of schooling as a universal right. For example, compulsory attendance, curriculum and teachers' qualifications fall within a government's *duty-of-care* portfolio today. Will they or can they remain so in a virtual learning environment?

The Committee has an open mind as to the possible answers, but in framing its advice, was mindful of its commitment to maintaining an open and flexible legislative framework for ACT schooling in order to take advantage of, and not inhibit, these developments.

## General Issues

### Documenting the ACT's Legislation on Schooling

One of the practical outcomes of this review is the Committee's recommendation that the two main Acts for administering schooling in the ACT be amalgamated into a single Act. Regardless of what other changes might be forthcoming as a consequence of the review, a single Act is a commonsense alternative to the present situation of two Acts, prepared at very different times in the history of schooling in the Territory.

The two present Acts are:

1. The *ACT Education Act (1937)* is over sixty years old and includes references to the *NSW Free Education Act (1906)* and the *NSW Public Instruction Act (1880)*. Both the latter Acts have been repealed

in NSW but remain extant in the ACT, and must be read as part of the *ACT Education Act (1937)*. The latter provides for such matters as compulsory attendance, a prohibition on corporal punishment, registration of non-government schools, free education, and non-sectarian teaching in government schools.

Most of the provisions in this Act remain as relevant today as they were over half a century ago and are testimony to the clear-sighted aspirations of the government of the day that it produce broad and flexible legislation covering what the community cherished above all else. One particular area that has become badly outdated is the set of provisions dealing with student truancy. The Committee makes recommendations for changes in this legislation in the part of this Report that deals with compulsory attendance.

2. The *ACT Schools Authority Act (1976)* covers the administration, financial management and governance of the ACT government school system and was promulgated over a decade before the ACT became a self-governing territory.

This Act contains certain provisions that have not been used since the

**Recommendation 1**  
**Establish a single Act for schooling in the ACT.**



## General Issues

introduction of self-government in this Territory. These particular provisions are the powers, functions, funding and staff of the ACT Schools Authority which, between 1974 and 1989, comprised a policy-making Council and an administrative office to manage the implementation of these policies. The office also undertook the recruitment and financial elements of the ACT public education system. With the arrival of self-government in 1989, the Council was disbanded and the powers of the ACT Schools Authority were vested in the Chief Executive of the ACT Department of Education.

Decisions about the relevance of these provisions to today's public education system can only be made after the government has considered the Committee's recommendation relating

to governance of the ACT government school system.

The other key component of the *ACT Schools Authority Act (1976)* is a set of provisions about the powers, functions, and role of boards in ACT government schools, provision which the Committee believes should be retained. So long as the community values the formal participation of parents in educational decision-making, boards will continue to be a central element in ACT schooling.

The *ACT Schools Authority Act (1976)* is supported by the ACT Schools Authority Regulations which deal with the election of persons to school boards. The relevant parts of the Regulations should be moved into a new document to be used in association with the proposed new Act for schooling in the ACT.

The Committee believes that it is both desirable and feasible to merge the two Acts into a single Act. Moreover, during revision and the likely restructuring of the legislation, the government will have the opportunity to ensure that the new Act exemplify the attributes of good legislation, which the Committee believes will:

- stand the test of time;
- focus on what is most important;
- avoid operational detail; and

- remain accessible to the community through its clear and succinct language.

### Values & Principles

The Committee was persuaded by responses from the community and by members' own collective knowledge that it is timely for the ACT government to include a *Statement of Values and Principles* as the preamble to its legislation on schooling.

The Ministerial Council for Employment, Education, and Youth Affairs (MCEETYA) is already committed to a set of National Goals for Schooling, and has made a series of Declarations, the latest in Adelaide in 1999. Several community submissions stated a reluctance to see these Declarations adopted by the ACT as its Statement of Values and Principles for schooling. Others suggested that the ACT government might make a brief declaration of support for the United Nations Convention on the Rights of the Child in its legislation.

What the Committee found, however, was that most community members would prefer to have a preamble that had been tailored for, and perhaps by, the local education community. This could involve a pronouncement along the following lines: *Students deserve to*

*be taught by professional teachers adequately supported in carrying out their responsibilities in the ACT community. Their parents deserve to be regularly and accurately told about the progress of their children at school.*

Alternatively, the preamble could include a definition of what “education” is, and then a series of commitments to:

- developing the emotional, physical, intellectual welfare of all students;
- developing the spiritual, moral and ethical welfare of all students;
- guaranteeing the participation of parents and students and their right to choose the most suitable educational setting;
- valuing diversity, innovation, and opportunity;
- respecting different belief systems;
- maximising the outcomes from schooling and striving for equity of outcomes; and
- ensuring quality assurance mechanisms are effective.

The Committee is convinced that the preamble can be sufficiently broad to apply to all sectors of schooling in the ACT. The Committee also supports the inclusion of brief statements of values and principles, specific to the government and non-government sectors respectively, in the relevant

parts of the legislation for schooling. This approach would allow the essential characteristics of each sector to be expressed in a very public way.

### **Teacher Registration**

Good teachers are a prerequisite for good learning and good schools. Throughout the consultation, the community’s recognition of the importance of teacher quality to all aspects of schooling, from curriculum to student welfare, was very clearly articulated. Quality control has become a major issue for all professions because the rapid growth in knowledge has led to qualifications quickly becoming dated. The teaching profession is no exception. The Committee is very much aware that the community is increasingly looking to professional associations to ensure that the continuing growth and development of their constituents is appropriate.

This is not the end of it. The community also recognises the need to guarantee the safety and welfare of students through the careful selection and supervision of teachers and others involved in the school setting. The Committee strongly supports that view.

Over the last few years, several Australian jurisdictions have introduced

***Recommendation 2***  
***Include a Statement of Values and Principles as a preamble to legislation for schooling in the ACT.***

***Recommendation 3***  
***Include additional statements of Values and Principles for the government and non-government sectors at the beginning of the relevant sections of the legislation.***

## General Issues

forms of Teacher Registration to their teaching service. Some have enacted these changes legislatively; others have adopted an administrative approach to the issue. The Victorian government recently announced the establishment of a Ministerial Advisory Committee specifically to examine the issues associated with setting up an Institute of Teaching, the vehicle that would manage Teacher Registration in that state.

The non-government school sector has traditionally opposed formal structures for Teacher Registration when these structures do not enhance the selection processes already in place, or where registration is to be a mandatory requirement for teacher employment. Some Committee members re-affirmed this position and indicated that they would continue to maintain this view in any future consideration of a Teacher Registration

scheme which had an impact on the non-government school sector.

However, they would look favourably on a voluntary professional scheme that contained significant elements directed at the continuous development of individuals within the teaching profession.

The Committee notes that current teacher recruitment and deployment arrangements in the ACT appear to be working reasonably well in both schooling sectors. Nevertheless, most of the Committee also believes that Teacher Registration could be a positive step towards ensuring the professional currency of teachers and protecting the well-being of students. In that light, the Committee commends to consideration of Teacher Registration to government.

### Government Funding

Throughout the consultation phase, the Committee was made aware that there was widespread concern in the ACT community about government funding for education in the Territory. Broadly, these concerns were about both the quantum of funding and the purpose to which these funds ought to be put.

Level of funding is a vexing issue, for there are few who would agree that

**Recommendation 4**  
**Consider the introduction of Teacher Registration for professional enhancement of teachers in the ACT.**

funding for education (or health or roads) is ever sufficient. By offering the rich and diverse programs that they do, many schools are caught in the dilemma of having to seek additional funds from the families of students in order to provide these programs. On the other hand, for every school to expect full funding to be able to offer a particular suite of educational programs raises problems for any government and, ultimately, for the community which must pay for these ambitions.

The funding dilemma for schools was expressed differently in each sector. In the government school sector, the call was for the legislation to specify precisely what government funding was intended for. In the non-government sector, the issue was the need for assurance that government funding would continue to be directed there.

Most submissions to the Review acknowledged that it was neither feasible nor wise to have legislation that was too detailed on the matter of government funding for ACT schooling. This does not surprise the Committee, for the ACT has a community that clearly understands the annual budgetary processes which determine the actual levels of funding to be made available, and also the difficulty of trying to establish a legislative base for funding.

Some Committee members believe that the budgetary process should include a statement on what facilities, staffing and resources are provided for government schools through the budget, to ensure that there is a specified link between the funding provided and the agreed needs of schools.

The Committee understands the tensions that have led to these concerns being expressed during the course of this Review, and is aware that a similar situation exists in education jurisdictions elsewhere in Australia. To make specific legislative statements about government funding would be unwise, given the dynamic (and not always easily controlled) political, economic, and educational contexts in which schooling operates now, and will continue to operate into the future. In the Committee's view, a more feasible way of dealing with the issue would be to include the government's commitment to the funding of schooling in the proposed general Statement of Values and Principles.

**Recommendation 5**  
**Include a statement about the government's commitment to the funding of ACT schooling in the general Preamble to the legislation.**

## General Issues

### Government Accountability

Contemporary governments have a legal obligation to provide schooling for children and to take a duty-of-care role towards them. These obligations are spelled out in the legislation of the various States and Territories, and it is the Committee's belief that legislation for schooling in Australia does not differ greatly in intent from jurisdiction to jurisdiction.

Some members of the Committee have suggested that it would be appropriate to include in legislation a requirement for the ACT government to report annually on key inputs and outcomes for the whole system. Those of that opinion felt that there was insufficient information available for them to judge the government's

performance. Other members felt confident that a great deal of the information being sought was already published. Examples are:

- Annual Report of the Department of Education and Community Services (which is required under the *Annual Reports (Government Agencies) Act (1995)*);
- (annual) National Report on Schooling; and
- (annual) Year 12 Study.

The Minister also reports annually to the Assembly against an Education Purchaser/Provider Agreement, while schools publish a range of reports, such as:

- Board Reports; and
- School Development Report.

The issue for the Committee ultimately became one about the degree of legislative specificity involved, a difficult matter to resolve neatly. The current debate about the appropriate form of reporting on literacy and numeracy outcomes is a case in point. The Committee acknowledged the amount of information on schooling inputs and outcomes currently available, and also that this accountability report was assured by several Acts and Agreements. However, members were unable to reach agreement about whether

**Recommendation 6**  
**Maintain an obligation to provide comprehensive information about key inputs and outcomes in the ACT school system.**

existing arrangements were adequate and appropriate or whether to have additional legislative requirements for information.

The Committee therefore draws the Minister's attention to the public's continuing need for timely, meaningful information about significant inputs and outcomes. It urges the Minister to seek opportunities for improving the quality of information available to the ACT community.

## Compulsory Attendance

### Age

The ACT community tends to support the current compulsory age thresholds, namely from age 6 to age 15 years (legislatively 14 years 9 months). Other suggestions included:

- raising the schooling leaving age, since the great majority of students in the ACT remain at school beyond the compulsory years anyway;
- lowering the compulsory entry age, since so many students attend preschool in the ACT; and
- linking compulsory attendance to a minimum level of achievement.

All Australian States except Tasmania have mandated the 6/15 interval as the

compulsory years for schooling.

Tasmania sets the school leaving age at 16. The Committee believes that it is appropriate to maintain existing legislative specifications for compulsory school ages for the time being. This may seem at odds with the Committee's views about the importance of students completing their years of schooling if they have any hope of being successful in their later lifelong learning cycle. However, the Committee notes that retention rates are high in the ACT and that compulsion cannot ensure effective learning, particularly with senior students. The Committee recommends that the statement of Values and Principles include the goal that all students should complete the senior years of schooling with a broad general education, which covers both the academic and the vocational, and which prepares them for lifelong learning.

### Attendance

Students are required to attend school, and schools are required to monitor attendance under the *ACT Education Act (1937)*. In most schools, this involves the marking of Attendance Rolls although some secondary schools have begun to harness technology to capture daily student attendance electronically.

**Recommendation 7**  
**Maintain the current compulsory school age thresholds.**

**Recommendation 8**  
**Include in the Values and Principles the goal that all students should complete the senior years of schooling with a broad general education, which covers both the academic and the vocational, and which prepares them for lifelong learning.**

## General Issues

The definition of what constitutes “attendance” and the capacity to closely monitor it have both shifted somewhat since the legislation was originally promulgated. In those days, students were either attending school or absent from school. Now, many secondary students leave their school campus at various times to learn in other settings – for example, the workplace – and these multiple learning pathways are increasingly resulting in students not being “at” school in the traditional sense, but legitimately involved in accredited learning programs elsewhere. The home for all or part of the day could become another logical place of learning, with the introduction of Internet-based learning technologies and the electronic availability of suitable courses of study.

The legal definition of what distinguishes attendance from non-attendance is already less straightforward than it was even a decade ago. The Committee believes it is timely for any new legislation on schooling to incorporate a reference to attendance that reflects the evolving nature of schooling, and to continue to include a requirement to monitor attendance.

The obverse of compulsory attendance is truancy and persistent

non-attendance, as well as suspension and exclusion.

### *Truancy (and persistent non-attendance)*

Provisions dealing with truancy in the *ACT Education Act (1937)* are outdated and largely irrelevant; current procedures for managing truancy are developed at the school level. The Committee has the view that truancy remains a serious matter, because young people miss out on significant educational experiences if they are not at school. The Committee sees it as so important, in fact, that it recommends that truancy provisions continue to be included in legislation for schooling in the ACT although in a greatly revised form.

The ACT community has recorded its desire to have truancy dealt with constructively and in a non-punitive manner and the Committee supports that view. To achieve that outcome, some basic principles should be incorporated into legislation. These should include:

- having truancy dealt with in a non-punitive manner;
- monitoring instances of suspected truancy;
- adopting a multi-agency approach to dealing with truancy; and
- involving parents/carers in overcoming truancy.

***Recommendation 9  
Incorporate into the  
legislation a definition of  
attendance that reflects the  
evolving nature of schooling.***

### *Suspension and Exclusion*

The ACT is the only Australian jurisdiction that lacks legislative provisions for the suspension and exclusion of students. In ACT government schools, the matter is dealt with administratively, as set out in *Suspension and Exclusion of Students: Policies and Mandatory Procedures (1999)*. Procedures are formal and transparent, and open to adjustments as new and better ways of dealing with the issue are found; students and parents have a right of appeal.

The non-government sector manages suspension and exclusion at the school level, through the application of policies and procedures, although policy details vary from school to school. The Registration process of a non-government school includes a review of the adequacy and application of policy and procedures dealing with the suspension and exclusion of students.

As with truancy and persistent non-attendance, the Committee believes that suspension and exclusion from school can lead to loss of significant educational opportunities. The Committee therefore recommends the incorporation of some basic principles into legislation, notably:

- ensuring students and their parents or carers are appropriately informed throughout; and
  - ensuring that an appeal process is set in place and available for students and their parents or carers to use when they have need.
- making provision for learning to go on during the period of suspension or exclusion;

***Recommendation 10***  
***Incorporate some basic principles about the management of student truancy, suspension and exclusion into the legislation.***



## General Issues

### Curriculum

The ACT community takes an active interest in curriculum, and those who attended the public consultation meetings provided a wide range of comments, generally indicating that current arrangements have served the Territory well.

National frameworks and profiles provide the general curriculum standards within which learning programs are shaped in the ACT. Within these,

- curriculum development and delivery in ACT government schools K to 10 occurs within a curriculum framework negotiated within the ACT government school system. Under the *ACT Schools Authority Act (1976)*, school boards have a significant role when deciding on the curriculum to be delivered by their schools. Quality assurance of both development and delivery is regularly conducted through the School Development and College Review process;
- The Board of Senior Secondary School Studies (BSSS), under its own Act, has accreditation and certification powers in relation to the curriculum taught in years 11 and 12 in both government and non-government schools. Through its processes, the BSSS approves

courses for the year 12 certificate; and

- The *ACT Education Act (1937)* provides the basis for curriculum development, delivery and review in non-government schools.

The Committee recommends incorporation of the principles behind curriculum into legislation. It is likely that the accreditation of school programs and the certification of students will change in the coming years, particularly in the senior secondary area, where students might formalise their school-workplace programs even more than is currently the case. The advent of the Internet will also have consequences for students to learn (and be certified) remotely, either from ACT schools or from schools in other jurisdictions. The issues associated with the accreditation and certification of curriculum are likely to become increasingly complex and all governments will need to monitor this evolution closely and take a strategic approach to the opportunities presented.

**Recommendation 11**  
**Incorporate the principles behind existing arrangements for curriculum into legislation.**

### **Closer relationships between government and non-government schools**

The ACT community was canvassed about the need to have a legislative basis for relationships between government and non-government schools. The common response was that these kinds of relationships evolved over time and, when they occurred, were extremely constructive associations.

The Committee believes that these relationships should continue to be encouraged but sees no benefit being derived from formally legislating the links. The government is simply urged to actively support cooperation in its many forms.

### **Impact of Internet-based learning technologies**

The Committee has already alluded to some of the potential challenges that will be presented to the existing legal and operational dimensions of schooling in the ACT when Internet-based learning technologies become more widespread. Over time, these changes will force the community, legislators and administrators to raise questions about what the ACT government's role in schooling can and should be in the future. In such areas

as curriculum, teacher accreditation, and compulsory attendance, concepts of a government's duty-of-care will become less straightforward when these technologies begin to significantly influence the traditional expectations of current schooling arrangements. Our community will expect government to reframe their obligations, including duty-of-care, to take account of the learning opportunities that will flow from access to the Internet.

The evolving virtual classroom cannot be clearly understood at this time, yet it is reasonable to anticipate that notions of jurisdiction will become blurred. In all likelihood, the most tangible short-term outcome for government will be an increase in students using multiple learning pathways, some not necessarily within the precincts of the traditional school.

The Committee believes that it is important for the ACT government to take a strategic approach to the consequences of Internet-based learning technologies by exploring their likely impact on legislative provisions in the not-too-distant future.

**Recommendation 12**  
*Allow formal ties between particular government and non-government schools to evolve.*

**Recommendation 13**  
*Assess the likely impact of Internet-based learning technologies on existing legislative provisions for schooling in the ACT.*

## Government School Education

### Statement of Values & Principles in the Government School Sector

In the first section of this report, the Committee recommended that a preamble lead into the section of the legislation dealing with **Government Schools**. The Preamble would express the specific values and principles that characterise public education in the ACT and be read in context with the General Values and Principle for schooling in the ACT.

The following statement outlines the kind of preamble that could be used:

*The ACT government school system is founded on the democratic principles of equity, universality, non-discrimination, participation in decision-making by stakeholders and accountability to the community. Schooling is seen as a*

*common good that all young people are entitled to and which provides a foundation for a democratic society.*

*Government schools offer a broad and balanced secular education to all students from preschool to Year 12 regardless of gender, race, ethnic and socio-economic background. Government schools are free, open to all and are located to provide ready access to all families. Government funding for schools is directed at the needs of schools and their students.*

*The school system combines central policies and guidelines as broad guarantees of quality and equity with school-level provision and decision-making to encourage flexibility, innovation, and responsiveness to local community needs. It promotes parent involvement in the learning of their children and provides for parent, teacher and student participation in decision-making at all levels.*

### Governance in the government school sector

#### Ministerial Council

Calls for a representative, collaborative forum through which educational issues could be discussed were consistently made to the Review Committee. The models put forward

can be summarised as:

1. a new statutory body comprised of stakeholders and government nominees with the policy-making powers currently undertaken by the Executive of the Department of Education and Community Services, and service delivery managed by the Department;
2. a reconstructed non-statutory Ministerial Advisory Council on Government Schooling, with a more defined and participative advisory role, including a capacity to undertake policy and research on its own remit;
3. a new statutory stakeholder group replacing the existing Ministerial Advisory Council on Government Schooling, with terms of reference that guarantee a formal advisory role in educational decision-making.

The Committee's strongly-held view is that community involvement in decision-making adds considerably to the quality of the outcomes from schooling. Also, students have a proper role to play in such structures, in the same way as they do on their own school boards. Because it seems appropriate that government assess which of the three options is the most suitable, the Committee has not attempted to canvass the strengths and challenges of each option in any

exhaustive way. It simply makes some brief observations about each.

Option 1 has the support of several members of the Committee, who see an "Education Board" as a way of establishing a participatory governance system with parallel structures at the system and school levels. It would provide parent, teacher and student participation in broad policy formulation at the system level and complement such participation in policy formulation in schools. The Education Board would be responsible for developing system policies and guidelines, long-term planning and advising on the allocation of the Education budget. It would be subject to direction by the Minister of Education. The Board would not be involved in the day-to-day management of the school system, which would remain the responsibility of the Department.

Other members of the Committee supported Options 2 and 3 because these structures provide meaningful avenues for formal community participation in policy advice, without separating the Minister from the Department in this area. Options 2 and 3 still have a stakeholder body, with advisory powers and a capacity to initiate projects, policies and research. Such bodies could provide important support to government and be a

significant forum for the canvassing of alternative views of schooling. Some Committee members felt that the risk associated with the non-statutory model (Option 2) is that its brief could be diluted and its advice ignored, and that there was no recourse to restore its role. This potential risk is considerably reduced with the statutory model (Option 3) if there is a requirement to publicly report, say, on an annual basis.

An example of Option 3 is the National Board on Employment, Education and Training (NBEET) which, between 1988 and 1996, responded to the relevant Commonwealth Minister's requests as well as initiating programs at its own behest. It reported directly to Parliament.

Although the Committee did not reach a consensus as to the best model for community participation in decision-making, there was unanimous support for the view that significantly enhanced and formal community participation at the highest levels of educational decision-making was highly desirable.

### *School Boards*

School boards are one of the cornerstones in the provision of government schooling in the ACT. They were introduced as part of an educational reform agenda in 1974 and were the first of their kind in any

***Recommendation 14***  
***Strengthen community involvement in educational decision-making at the system level for government schools.***

## Government School Education

Australian education jurisdiction.

Provisions in the *ACT Schools Authority Act (1976)* define the functions and powers of boards, for example determining educational policies, managing school finances, developing community involvement, and controlling use of school buildings.

One particular need expressed by the community was to have a statement in the legislation that described, in general terms, the role of the school principal in relation to the board. The Committee notes that the publication, *School Boards – Partnerships and Participation*, describes the principal as the Executive Officer of the board, with responsibility for the day-to-day running of the school. The role of the principal should be made explicit in the legislation to facilitate effective partnership, shared expectations and good communication.

A second area of community concern was the ambiguity surrounding the term “educational policies” in the *ACT Schools Authority Act (1976)*. The Committee believes that this term was always intended to include the curricular dimensions of all government schools, since the school boards of all primary and high schools are expected to approve the curriculums of their school. They do so within the standards of the day, which

are currently the ACT Curriculum Frameworks and the ACT Across Curriculum Perspectives. However, the existing uncertainty suggests that amending prevailing legislation specifically to include curriculum would be useful to all concerned. This recommendation has some relevance to the section on Curriculum later in this report.

Overall, the Committee found no evidence that boards sought stronger or broader powers than they already had. Rather, they needed a clearer description of two specific aspects of their existing functions, namely the role of the principal and the board’s role in curricular matters. On balance, the Committee does not think it necessary to have school boards incorporated in order for them to undertake their responsibilities effectively but recommends amending those provisions already described above.

**Recommendation 15**  
**Amend existing legislative provisions for government school boards to make explicit the role of the principal and the curricular responsibilities of these boards.**

## Parent Participation

Parent participation in the learning of children and in decision-making was a founding principle of the ACT government school system and has remained a key feature. The Committee believes that this should continue.

The Committee has reviewed parent participation in formal decision-making structures in the section on Governance. Here, it considers parent participation more generally. Some members of the Committee believe that the new legislation should acknowledge the importance of parent participation in schools and children's learning, and include provisions to promote and support such participation. Legislation cannot change attitudes or mandate cooperation between parents and schools. However, it can provide key support for parent participation by giving official legitimacy for parent participation and influencing the climate in which learning and decision-making occur in schools.

A system level policy and action plan would provide the necessary base from which to develop and extend parent participation in schools. It would help clarify roles, rights, and responsibilities, provide clear objectives and set directions. Government-

provided training for administrators, teachers and parents is necessary to ensure practical support for strengthening effective parent participation in schooling.

Effective communication is a key component of parent participation in schools. Parents should also expect to receive regular information about the progress of their children in all aspects of schooling and to be given information about school policies and curriculum objectives for each stage of learning.

Others on the Committee acknowledged that the ACT has a long history of productive parent involvement in schooling, and that this had come about in the absence of specific legislative provision regarding parent participation generally. They saw no benefits in having detailed legislative references but supported a general legislative requirement for parent participation policy.

**Recommendation 16**  
**Make provision in the legislation for a general statement of, and policy in support of, parent participation in government schools.**

## Government School Education

### Funding in government schools

#### *Government schooling is free*

First and foremost, the Committee is unanimous in its view that government schooling must remain as a free facility in the ACT, and that the provisions of the *NSW Free Education Act (1906)* are to be maintained in the legislation for schooling in the ACT. It would be useful at this time to make explicit the provision for fee-paying international students.

#### *Funding arrangements*

Some members of the community believe that the legislation should make specific mention of a needs-based component within funding for government schools. The Committee is aware that, in practice, needs-based funding is already in place, and suggests that the government makes a statement in the legislation supporting this practice.

#### *Voluntary contributions*

Already noted in this report are the community's concerns about the levels of government funding for schooling in the ACT, and the vexing issue of how to reach agreement about what constitutes a sufficient level. Many of the submissions to the Committee

expressed the view that funding was inadequate and that this forced government schools to seek additional financial assistance through voluntary contributions from the families of their students.

Some community members proposed that voluntary contributions be formalised in the legislation as school fees. The Committee rejects this proposal, since this course would clearly contradict the basic tenet of the *NSW Free Education Act (1906)*, which states, "*Education in primary and superior public schools shall be free and no fees shall be chargeable for the same.*"

**Recommendation 17**  
**Maintain the provisions of the NSW Free Education Act (1906) in legislation for ACT schooling, and make explicit the provision for fee-paying international students in government schools.**

**Recommendation 18**  
**Make a statement in the legislation supporting needs-based funding components for government schools.**

The Committee investigated the legislation on the issue in other Australian jurisdictions, and found that most remain silent on the matter of voluntary financial contributions although it is common knowledge that the practice is widespread. The recently-passed Western Australian legislation is the only Act to make explicit mention of a schools' capacity to ask for financial contributions for educational goods and services in secondary government schools. It also nominates that cannot be purchased from these contributions.

Most participants in the consultation emphasised that non-payment of voluntary contributions by government school students and their families must never lead to harassment or discrimination. This is a position strongly supported by the Committee, which notes that the departmental policy, *Parental Contributions to School Finances (1996)*, prohibits the kinds of negative behaviour that so concerned these participants. The policy also includes *inter alia* a requirement for schools to communicate with parents about the voluntary nature of such contributions, and for them to ensure the confidentiality of who has and who has not made these contributions to the school.

The Committee understands that the

practice of asking for voluntary financial contributions exists in government schools and that this activity will benefit from a clarification of the types of financial contribution being requested and the conditions under which these contributions can be sought. It concluded that the legislation should clearly state that contributions are voluntary and not compulsory and that:

- students should not be denied benefits, services or access to courses because their parents do not make voluntary financial contributions;
- students should not be approached or harassed for financial contributions; and
- records of who has made voluntary contributions should be strictly confidential.

**Recommendation 19**  
**Include in legislation the conditions under which schools may request voluntary financial contributions.**



## Non-government Education

### Statement of Values & Principles in the Non-government School Sector

In the first section of this report, the Committee recommended that a preamble be added to that section of the legislation dealing with **Non-government Schooling**. The Preamble would express the specific values and principles that characterise schools in the non-government sector, and would be read in context with the General Values and Principles.

The following statement outlines the kind of preamble that could be used:

*The non-government school sector consists of schools from a range of different educational and religious philosophies. They include Catholic system schools as well as independent schools such as Anglican, Catholic, Uniting Church, Christian parent-controlled, Steiner and Montessori schools. The variety in the sector reflects the diversity of the community in the ACT. Often these schools have emerged out of the philosophical preferences of parents for a particular style of education for their children.*

*The ACT Government has committed itself to funding support for the non-government school sector.*

### Establishment of new non-government schools

### Re-registration of existing non-government schools

The ACT government assumes a duty-of-care role in relation to the provision of schooling in non-government settings. That is, the government requires that non-government schools provide evidence of their ongoing curricular and financial viability in order to assure the ACT community, including parents and carers, that students can expect a suitable and safe standard of educational experience from these settings.

A common theme in submissions from the non-government sector was that applications for the establishment of new non-government schools and continued registration of existing non-government schools ought to be relatively straightforward. Some of the views even went so far as to suggest that the government should not take any quality assurance role whatsoever in the non-government sector, and that parents' enrollment of their students was a sufficient indication of a school's suitability and educational viability. In contrast, there were many calls from the government sector to have government schools and non-government schools subject to the same establishment and registration requirements.

All Australian jurisdictions except Queensland dictate the process for establishing and registering non-government schools in their legislation. The Committee endorses the government's duty-of-care responsibilities in relation to all students in the ACT. The community has a right to expect that educational standards are in place and will continue to be met.

In this area of its Review, the Committee also addressed public-interest considerations as part of the decision-making process associated with applications to establish a new school. Some Committee members believe that proposals for new non-government schools should meet public interest criteria, including orderly planning objectives. In their view, there should be a public process to assess the costs and benefits of proposals for new non-government schools and extensions to existing non-government schools. This process should include an assessment of the impact of the proposals on existing government and non-government schools as well as an assessment against the registration criteria discussed above. To this end, these members proposed the creation of a Non-Government Schools Registration Board to be responsible for the registration, monitoring, and re-registration of non-government

schools. The processes of the Board should be open to public scrutiny and participation.

The Committee members supporting this process do not consider it to be in conflict with the Competition Principles Agreement. In this they find support in the Second Reading Speech on the Competition Policy Reform Bill. They further note that the competitive neutrality provisions of the Agreement only apply to significant government businesses and not to the non-businesses, non-profit activities of these entities.

Other members of the Committee believe that the inclusion of a public interest criterion is unnecessary, given that current registration requirements cover the public interest criterion contained in the Competition policy. It was further argued by them that, under that legislation, the impact on surrounding schools is not a matter for public interest.

It is the Committee's considered view that, in general, the legislative provisions which currently exist for the re-registration of existing non-government schools and the establishment of new schools meet the government's duty-of-care obligations and should continue.

***Recommendation 20***  
***Retain current legislative provisions relating to the establishment and re-registration of non-government schools.***

# Preschooling

## Government Preschools

Participants in the consultation process gave general support for the principle of keeping the government preschool sector non-compulsory and free.

At the moment, the *ACT Schools Authority Act (1976)* enables the ACT government to levy a fee for attendance at preschool. However, collection only occurred during one 12 month period, during 1988. Those who addressed the issue of government preschools during the Review's consultation phase were unanimous that they wished to see the fee removed from legislation.

Having considered the importance of preschools in the ACT schooling system, and recognising that the current processes are working well, the Committee is of the view that it is advisable to remove mention of the compulsory fees in government preschools, and otherwise leave existing legislative provisions in place.

The Committee gives strong support to the preschool sector of education and regards it as the first formal stepping stones in the line-long learning cycle. The ACT community places great store in preschooling, and this is apparent in the high participation of 4 year olds in the preschool sector.

## Independent Preschools

As with the issue of government preschools, there was not a great deal of comment in any of the consultation forums about the programs in independent preschools. There was general agreement that independent preschools should continue to be licensed, an arrangement which takes place under the *Children's Services Act (1997)*.

The Committee found merit, however, in the view put forward by some members of the community that the current process of licensing of preschools attached to registered non-government schools potentially isolated the preschool programs from feeder primary school programs. The Committee believes that this matter warrants review in the interests of enabling greater articulation with kindergarten and Year 1 programs.

**Recommendation 21**  
**Remove mention of compulsory fees for government preschools from existing legislation.**

**Recommendation 22**  
**Review licensing arrangements for independent preschools attached to registered non-government schools.**

## Homeschooling

As is the case in the non-government school sector, the ACT government takes a duty-of-care role in relation to the provision of schooling in home settings. Homeschooling is administered under the *ACT Education Act (1937)* and supported by the department's policy, *Registration of Home Schooling in the ACT (1987)*. Currently, fewer than 100 students in the ACT are registered as being schooled at home.

Existing legislative requirements in the ACT are that those wishing to educate their children away from the traditional school settings apply to the Chief Executive for a certificate exempting their child(ren) from attendance at school. Before an exemption certificate is issued, the Chief Executive must be satisfied that the child(ren) will receive suitable instruction at home or elsewhere.

In the consultation process, a small number of participants called for homeschooling to be subject to the same requirements as the non-government sector, and be required to provide evidence of ongoing curricular viability. The homeschooling groups that took part in the consultation process had very different views, asserting (a) that it was their right to educate their children as they wished, without the interference of

government requirements, and (b) that additional requirements would be burdensome and likely to force these community groups underground.

The Committee believes that a government's duty-of-care responsibility is the central consideration in balancing the competing perspectives on homeschooling. Its responsibility is for ensuring that all children in the community receive an adequate level of education, and protecting the rights of all minors to appropriate learning. Most States have homeschooling specifically identified in their legislation.

The Committee concluded that, in the circumstances, homeschooling is working reasonably well in the ACT, and that legislation and policy support are adequate. Because of opportunities brought about by Internet-based learning technologies, it is likely that the number of students taking advantage of this technology and undertaking at least some of their learning at home will increase. For this reason, the Committee believes that the official parameters within which homeschooling is managed will need to be reviewed some time in the future.

The Committee feels the need to make the observation to government that only a very fine line separates

truancy and homeschooling. Anecdotal evidence is that as many as 500 children could be being homeschooled in the ACT, a number significantly greater than those officially registered with the Department of Education and Community Services. Thus, these non-registered students can be deemed truants.

The basic principles already proposed for legislation in the Compulsory Attendance section of this Report can empower the government to uncover unauthorised homeschooling and ensure that the best interests of the student are being pursued. The Committee again commends Recommendation 8, which is to, "Incorporate some basic principles about the management of student truancy into the legislation".

**Recommendation 23**  
**Retain current legislative provisions relating to homeschooling.**

# Competition Policy

As part of this review of legislation, the Department of Education and Community Services commissioned a review of the interaction between competition policy and education legislation. The Department commissioned Mr Roderick Best to examine specifically the context for schooling in the ACT within the existing legal provisions that applied to competition and competitive practices. In particular, the study was to:

- examine existing legislation and regulatory procedures<sup>2</sup>;
- identify anti-competitive elements; and
- assess the comparative costs and public benefits of these restrictions.

Following is a brief summary of the findings in the Best report which is available on the Department's website<sup>3</sup>:

1. The provision of education by a government school, as it is presently delivered, is a non-business activity and is therefore not subject to competition law.
2. The application of competition law to non-government schools is not so clearly decided and accordingly, while it is probable that a non-profit non-government school will also be described as a non-business activity rather than a business, that cannot always be assumed.
3. The foregoing does not mean that schooling activities (in either government or non-government schools) might not include a level of commercial activity. Examples (from outside Australia) where education related activities have been subject to competition policies or laws include:

- the pricing of textbooks from a bookshop located on the premises;
  - restrictions based on student residence;
  - refusing to give advanced standing to students of other facilities;
  - provision of education using only specified equipment, where the specification is based; on an intent to exclude a competitor from the market place.
4. These activities are, in the main, not specifically prescribed in legislation but arise from how a school conducts its affairs. Since this review is limited to education legislation, it does not consider further the interaction of such activities and competition policy.
  5. Registration of non-government schools is likely to be exempt from the provisions of the *Trade Practices Act (1974)* since registration may be interpreted as “granting, refusing to exempt, revoking, varying licenses” which is exempt under the *Trade Practices Act (1974)*. Government must protect against artificial barriers to registration of non-government schools, most effectively by adhering to the requirement for minimum standards to be met by all participants in the “market”.
  6. Public interest is a reasonable consideration within any decision dealing with the granting of permission to establish a new school, or to close an existing school. In instances where refusal to grant an application is being contemplated on the grounds of public interest, the likely reasons will be (a) not being the best use of public funds, or (b) inadequate educational programs being proposed. Whether or not the proposed new school potentially draws students from an existing school, or uses a non-mainstream stream pedagogy is not necessarily a public interest argument.
  7. The review found that the legislation governing the registration of courses does not mandate course registration and that the Board of Senior Secondary Studies itself is not a competitor with those schools registering their courses under the *Board of Secondary Studies Act (1997)*. Therefore, the registration of courses is not subject to the *Trade Practices Act (1974)*.

<sup>2</sup> *ACT Schools Authority Act (1976)*,  
*ACT Education Act (1937)*,  
*Board of Senior Secondary Studies Act (1997)*

<sup>3</sup> <http://www.decs.act.gov.au>

# Appendix 1

## Committee Members

**Professor Don Aitkin**

University of Canberra (Chair)

**Mr Grant Battersby**

ACT Council of Parents and  
Citizens Associations

**Mr Clive Haggar**

Australian Education Union  
ACT Branch

**Ms Joyce Hill**

Association of Independent  
Schools of the ACT

**Mr Geoff Joy**

Catholic Education Office

**Dr John Knight**

School Board Forum

**Ms Sandra Lambert**

Chief Minister's Department

**Dr Ian Morgan**

ACT Council of Parents and  
Citizens Associations

**Mr Christopher Peters**

ACT Region Chamber of  
Commerce and Industry

**Ms Mary Ann Ryan-Brown**

Canberra Preschool Society

**Ms Maureen Sellwood**

Association of Parents and  
Friends of ACT Schools

**Mr Trevor Wheeler**

Education and Community Services