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## **HOME EDUCATION ASSOCIATION, Inc.**

The Home Education Association (HEA) [www.hea.edu.au](http://www.hea.edu.au) is a national non-profit association that aims to encourage and promote the practice of home education in Australia. It was formed in April 2001 and has more than 1000 member families across all Australian states and territories. The Association is governed by a committee and managed by volunteers on behalf of the membership. The HEA has no affiliation with government education authorities and prioritises members' confidentiality.

The HEA provides a range of services to members, including facilitating access to resources and group discounts negotiated with educational service providers, and a newsletter. Volunteers field email and telephone inquiries from families and members of the general public, including non-member home educators, academic researchers, journalists and politicians.

The broader objectives of the HEA include:

- To uphold the principle that parents are primarily responsible for the education of their children.
- To promote a broader awareness of home education and its benefits throughout Australia.
- To promote and encourage the development of home education networks.
- To provide services and resources to home education networks and individual home educators.
- To endeavour to procure any rights, privileges, concessions or benefits relating to home education for home educators and their families.
- To maintain a respect for the diversity of philosophies and methods used by home educators.
- To use our membership size to obtain discounts and benefits for our members.
- To fund insurance cover for event organisers and work experience students.
- To support home education events and activities.

The HEA wishes to make a submission to the Review of the NSW Board of Studies, Teaching and Educational Standards (BoSTES).

As described in the BoSTES Review Issues Paper, registration of children and young people for home schooling is considered to be a part of BoSTES' School Registration and Accreditation responsibilities and on this basis the HEA wishes to discuss BoSTES' management of home schooling registration.

As was also noted in the Review Issues Paper, *"The NSW Minister for Education commissioned the review to ensure the current role, functions, structure and membership of BOSTES continue to best serve the community of NSW into the future by setting high and consistent education standards, building the best quality teaching and associated workforce, and improving outcomes for all students."*

The BoSTES Review Issues Paper asks,

*"3. Are processes and practices as effective and efficient as possible?"*

And specifically seeks input on whether

● *changes are required to BOSTES school registration and accreditation processes to ensure high standards"*

The HEA submission will address these questions.

First, the submission will briefly describe the home schooling registration process in NSW. Then it will explain how BoSTES is failing in their role as the regulator for home education in NSW by:

- refusing to register children and young people for home schooling for reasons that are unrelated to education
- not taking the disability or additional needs of children and young people into account in their registration processes
- appointing individuals with no home education experience or expertise as authorised persons
- focusing on compliance rather than educational quality and the needs of children
- implementing processes that discourage families from engaging with the regulatory system

Finally it will recommend that BoSTES' management of the home education regulatory system undergo a review and overhaul.

### **Home education registration processes**

In order to register a child for home schooling, a parent must follow the process prescribed by BoSTES as follows. A parent sends an application for registration for home schooling to BoSTES.

BoSTES allocates the application to an assessor, called an authorised person, who comes to the family home and assesses the educational plan, assessment process, reporting regime and educational resources of the parent. The authorised person then provides a report to BoSTES recommending that the application be approved, with approval periods ranging from three months to one year for a first application (and up to two years for subsequent applications), or recommending that the application be refused. If registration is recommended BoSTES issues a certificate of registration. If registration is refused the applicant is notified. Appeals processes through internal review and then the NSW Civil and Administrative Tribunal are available to individuals whose application has been refused.

### **Refusing to register children and young people for home schooling for reasons that are unrelated to education**

BoSTES routinely refuses to process or rejects applications for registration for home schooling because: the consent of both parents cannot be obtained; the family will not have a fixed address for the period for which they are applying for registration; the child was not sighted during the registration visit; and (until recently) that the child was not of compulsory school age.

#### Requiring consent of both parents

Applications to register for home schooling can usually be made by just one parent. However, where orders from the Family Court provide for shared parental responsibility for education, written evidence of both parents' permission must be provided to BoSTES. In such circumstances, the absence of the consent of one parent will result in the application being rejected or simply not processed. BoSTES' application form for registration for home schooling asks whether there are court orders in relation to a child and BoSTES will also refuse to process applications if the parent refuses to inform them whether they have court orders in relation to the child or if they state that they have no relevant court orders.

There is no flexibility in relation to BoSTES policy. It does not matter whether the other parent has not seen the child for a decade or more, how long ago the court orders were made, if there is a history of domestic violence, if the parent does not live in Australia, if the child is being physically or psychologically harmed at school, or if the child has a medical condition that means that s/he should not attend school.

In the experience of the HEA, the only circumstance in which there are difficulties with obtaining the consent of the other parent to register for home schooling is where there is a history of domestic violence. This requirement has, on many occasions exposed women and

children to domestic violence. Women have had to contact their perpetrator and beg for their consent to register for home schooling exposing themselves to physical and emotional violence and had to agree to various conditions in order for consent to be given. Children have been exposed to similar violence and conditions. The need to have the consent of both parents allows an ongoing process of control, intimidation and violence within relationships. This can continue for many years and be a source of enormous stress and distress for mothers and children. BoSTES is, furthermore, clear that consent can be withdrawn at any time.

It is the view of the HEA that the requirement for the consent of both parents where there are court orders providing for shared parental responsibility for education is facilitating abuse against women and children.

The following family's experience is not unusual:

*"My teenage son was withdrawn from school because of bullying that had left him extremely anxious and expressing that he wanted to kill himself. My ex-husband has not been actively involved in my son's life for many years, there had been no contact at all for 2 years and he did not even know which school he went to. I had to contact him to ask for his signature and was verbally abused, degraded and insulted for 2 hours about how it was my fault that our son was struggling. If I hadn't agreed with all the negative stuff he said to me I would have never have got that signature. It was very draining on me and I felt like I'd been hit by a bus. I find it wrong that he has to give me permission for this when he has no idea about his son or why this is his best option. I was able to get him to give permission, but when my son recently asked to see his dad and spent some time with him he told him that he needed to toughen up and threatened to MAKE him go back to school. My son just about died with fear (and said he never wants to see him again). I'm afraid that he will withdraw his consent for him to be home educated. If that happens I truly do not know what I will do for my son cannot go back to school."*

One mother is challenging BoSTES' policy in relation to dual consent. She removed her two teenage boys from school on medical advice in 2013, and applied for registration for home schooling, indicating on her application form that court orders existed. She was asked to provide written evidence that the father agreed to home education, which she provided, by way of a letter signed by the abusive, absent and uninvolved father, with no end time specified. This allowed the boys to be registered for home schooling for the initial maximum period of 12 months. Approaching the end of this 12 month period, in August 2014, the mother applied for reregistration, and sent in a copy of the same consent letter from the children's father. In response, an authorised person rang the father to see if he still consented to home education. He replied that he did not, and, after several contacts by BoSTES, eventually provided written confirmation of this, so the authorised person refused the application. The mother appealed

the decision, firstly internally to BoSTES, which was rejected, and then at the NSW Civil and Administrative Tribunal (NCAT), where the Tribunal determined that it was not the role of BoSTES *“to consider whether the applicant should have sole parental responsibility or unilateral responsibility to decide to apply for home schooling for the children. Its role is to consider an application for registration for home schooling made by a parent of a child pursuant to s 71 of the Act.”* BoSTES appealed this decision in NCAT. This appeal was dismissed. The case has now been pursued by BoSTES to the Supreme Court, to be heard in late June 2016. This process over two years has severely disrupted the secondary education of the boys, which had already been impacted by their medical issues and has caused considerable distress to this woman and her sons.

The policy requiring consent of both parents is in stark contrast to that applied by the NSW Department of Education. First, schools are instructed that they have no responsibility to seek to obtain the consent of both parents to enrol a child in school even where there are Family Court orders giving shared parental responsibility for education. As stated by in their policy, *“Dealing with Family Law Related Issues in School and TAFE”* (<http://www.schools.nsw.edu.au/media/downloads/schoolsweb/gotoschool/familylaw/familylawguide.pdf>) *“Enrolment in a school is regarded as a major long term issue...There is no requirement however for school staff to independently establish that any decision to enrol in a particular school has been made jointly by the parents.”*

Furthermore, even in cases where there are Family Court orders giving shared parental responsibility for education if parents disagree, schools should nevertheless enrol the student if the parent seeking enrolment is the person with whom the child lives, *“Sometimes parents cannot agree about the school at which their child is to be first enrolled. The Department’s primary focus is to ensure that all children of compulsory school age are either enrolled in and attending school or are registered for and receiving home schooling. In circumstances where parents are in disagreement, the child is to be enrolled in the school chosen by the parent with whom the child is then living.”*

However, this policy is being placed under threat by BoSTES’ legal action in the NSW Supreme Court. The argument being posited by BoSTES is that education authorities must obtain the consent of both parents where there are Family Court orders giving shared parental responsibility for education for ALL long term education decisions. As noted in the NSW Education Department policy, enrolment in school is considered to be a long-term education decision. Therefore, if BoSTES win in the Supreme Court the result will be that the Department of Education will have to change their policy to also require the consent of both parents for enrolment of children in school. A determination of this kind will almost certainly cause chaos in the NSW School system, due to the difficulties of many separated parents in reaching joint

consent, and will result in students left in limbo while their educational arrangements are determined by the Family Court system.

The cost of BoSTES' policy in relation to dual consent has been enormous, both personally for the families involved and financially for BoSTES. Parents have been known to move house in order to 'disappear' from the system, while in other cases, charges have been brought against parents for educational neglect because the child is unregistered (in such cases the Children's Court considers the quality of the education being delivered to be irrelevant). In the above legal challenge to their policy, BoSTES has required the use of Crown Solicitor, and a Barrister. Furthermore, in order to be granted leave to appeal in the NSW Supreme Court, they agreed to pay for the legal representation of the home educator (barrister and silk). An extraordinary amount of resources have been placed into preventing registration of children and young people for reasons that have nothing to do with educational quality.

#### Requiring that families have a fixed address

BoSTES requires families to have a fixed address in order to register for home schooling. This prevents travelling families and families with impermanent residence situations from registering. Families may be going on an extended holiday or travel due to the nature of their employment. Families find the travelling to be an excellent environment for home education as it facilitates the ability to learn in real life contexts. For example, families can study the marine environment while visiting the Great Barrier Reef or the exploration of Matthew Flinders and Nicolas Baudin while visiting Kangaroo Island or Aboriginal culture while at Uluru. Books, films and role-plays are a poor replacement for the real thing. As one mother describes,

*"We've been on the road for six years. We started with distance ed, but are now home schooling (so much better!). The freedom and the life experiences that our kids have you will never get any other way, even home schooling in a house. It is amazing. History first hand, science is everywhere, culture, socialising. We are a very inquisitive family and we all love learning so this helps."*

And as described by an HEA representative, *"I was assisting a large, extended family from one of the travelling Family Circuses who applied for home school registration but were denied purely on the basis that they had wheels on their home. They had a base NSW address but don't all physically live there because the nature of their family business demands that they need to keep moving around the State and at times around the country. Despite this they are very committed to their children's education. The only option that any travelling families have been given is distance education with all of the issues that accompany that - having to constantly*

*send and receive books and paperwork is arduous and expensive when one is constantly moving from town to town.”*

Unfortunately, BoSTES does not agree that the travelling environment is suitable for home education. BoSTES instructs families who they deem ineligible for registration for home schooling because they are “travelling for periods longer than the typical school holiday periods” to enrol in a school of distance education. However, the process and practicalities of distance education are often incompatible with impermanent residence (for example, accessing the internet is not possible in large parts of Australia and predicting the best postal address for learning materials may be extremely difficult). The strictures of distance education can impede children’s learning in the travelling environment and the majority of travelling families therefore remain unregistered.

*“We can't register because we travel full time, although technically based in NSW due to family connections. Distance education is not appropriate, as it doesn't fit with our educational philosophy.”*

#### Requiring the child to be sighted by an authorised person during registration visits

Since around 2012, BoSTES have required all applications for registration for home schooling to include a visit by an authorised person to the family home during which the child must be sighted (prior to 2012 a process by which registrations could be processed via documentation only was common). BoSTES’ ‘Information Package for Home Schooling’ states that there is an ‘expectation’ that the child be present during the registration visit and despite there being no legislative basis for this requirement it has in effect become a mandatory requirement.

The sighting of the child during the visit is apparently a welfare check. As described within a letter from BoSTES to a family seeking registration without their child being sighted, BoSTES is of the view that mandatory reporters have a positive duty to investigate whether a child is being maltreated.

*“As identified in the letter to you dated 9 September 2015 from the BOSTES’ Acting Director, School Registration and Accreditation Standards, Anita Yates, the BOSTES’ Authorised Persons are considered to be ‘mandatory reporters’ under the Children and Young Persons (Care and Protection) Act 1998 (NSW). For this reason, it is necessary for an Authorised Person to sight the child for whom registration is being sought.”*

This appears to be a misunderstanding of the role of mandatory reporters, which simply requires them to report any concerns about maltreatment that they encounter to child protection authorities (a lack of understanding of this concept by an authority such as BoSTES is



concerning enough in itself). However, the policy requiring children to be sighted does not take into account individual circumstances, nor does it allow that there may be other ways in which BoSTES could ascertain that a child is not being abused or neglected. It also does not consider the impact that having to be present for registration visits may have on some children.

The HEA is aware that there are many home educated children and young people who have become severely distressed as a result of being required to be sighted at registration visits. In one instance a family whose child had PTSD and who had previously become very distressed as a result of a registration visit declined to have their child present at a visit. Despite a recommendation from the authorised person that their application be approved because the education plan was excellent and because he had been provided with evidence of the child's wellbeing, BoSTES rejected the application. It required a lengthy and difficult appeals process and the involvement of the child's doctor for BoSTES to reverse their decision and register the child (the need for flexibility in registration processes to account for children's special needs is discussed later in this submission). It is ironic that a process that is supposed to be about ensuring children's wellbeing can cause their distress and even harm. Some families decline to register for home schooling simply because they are concerned that the process will be distressing for their child.

#### Requiring the child to be of compulsory school age

Since the Education Act 1990 was enacted BoSTES (and their predecessor the Office of the Board of Studies) has refused to register children and young people for home schooling if they are outside of the compulsory years of schooling. During this time, BoSTES' policy stated, *"Children who are not of compulsory school-age are not eligible for home schooling registration."*

In the NSW and Australian context, many rights and responsibilities are based on children and young people being considered school students. The inability to register for home schooling before the age of six or after the child's 17th birthday causes difficulties for home educated students in being unable to access resources and support such as a travel concession pass, student discount to theatre performances and some Centrelink payments. It also places young people in a no-man's-land of being neither a student nor employed nor unemployed which is psychologically difficult for some. The restriction of registration to only the compulsory years of schooling is particularly problematic for children with disabilities, whose move to tertiary study and work may be later than that of children who do not have disabilities. Almost all NSW school students are more than 17 years old when they complete senior schooling and are recognised as students until they do.



Over the years, many home educators have requested registration of their school-aged children and young people who were outside the compulsory years of schooling and have been refused. BoSTES explained their reasoning in a decision connected to an internal review rejecting an application to register a 17 year old for home schooling, *“Home schooling registration was understood to be the equivalent to an exemption from the compulsory school attendance provisions of the [Education] Act. Accordingly, the [Education] Act recognises home schooling as one of the options parents have for the education of their children of compulsory school-age and to ensure that children of compulsory school-age receive instruction based on and taught in accordance with the minimum curriculum for schools.”* This view that home schooling registration was simply an exemption from school attendance would have been revealed as nonsensical by a more than a cursory examination of the Education Act (1990) which specifically provides for an exemption from school attendance, that can be provided to institutionally schooled as well as home educated students.

The restriction of registration for home schooling to the compulsory years of schooling was recently overturned by a decision of the NSW Civil and Administrative Tribunal (NCAT). A home educator applied to register her 17-year-old daughter, the application was rejected and then the decision to reject was confirmed on the internal review. The home educator appealed to NCAT and BoSTES fought this appeal with a crown solicitor and barrister while the home educator represented herself. BoSTES was ordered to process the registration. This home educator has just received the registration certificate for her child, but the registration period is truncated at the child’s 18th birthday. A further appeal will likely be necessary for this parent to register her daughter (who has a disability that has delayed her education) past her 18th birthday. BoSTES has not informed home educators whose registration was cut short because their child turned 17 that registration outside of the compulsory years of schooling is now possible nor communicated this generally to the home education community. The HEA is waiting to see if the pending registration will in fact be granted.

Given the unequivocal decision of NCAT, the question must be posed as to how BoSTES and its predecessor were allowed to exclude school-aged children and young people from being registered for home schooling for 25 years.

## What are the requirements for registration for home schooling?

As described above, BoSTES commonly rejects applications for home schooling for reasons that are unrelated to educational quality. When they reject these applications they state that they are required to do so, that they cannot process these applications. It is therefore worth examining what the requirements are for registration for home schooling under the Education Act.

The NSW Education Act (1990) describes the factors that must be considered in assessing applications for registration for home schooling.

### *“72 Registration for home schooling*

*(2) The Minister is to register the child if the Minister, having regard to:*

*(a) the recommendation of the authorised person about the application, and*

*(b) any decision of the Tribunal on an application for a review of the authorised person’s recommendation,*

*is satisfied that the conditions subject to which registration is required to be given will be complied with.”*

The conditions subject to which registration is required are described in Section 73 of the Act which states,

### *“73. Conditions and duration of registration for home schooling*

*(1) The registration of a child for home schooling is subject to the conditions specified in the certificate of registration.*

*(2) The conditions so specified:*

*(a) must comply with the requirements of the regulations, and*

*(b) subject to any such regulations, must provide for the child to receive instruction that meets the relevant requirements of Part 3 relating to the minimum curriculum for schools.”*

Thus, the Act states that the conditions for registration for home schooling must comply with the requirements of the regulations and they must provide for the child to receive instruction that meets the relevant requirements of Part 3 of the Act relating to the minimum curriculum for schools.

There are currently no regulations pertaining to the registration of children for home schooling in NSW. There are therefore no conditions subject to which registration is required to be given that are related to anything but the quality of education being provided to children and young people. It therefore appears that there is no legislative basis for BoSTES to refuse to register children and young people for registration based upon not having the consent of both parents,

not having a fixed address, the child not being sighted during the registration visit, or the age of the child or young person.

BoSTES is tasked with assessing applications for home education, and their role is solely to ensure that a child or young person is receiving an education that meets the requirements of the Education Act (1990). Yet they are failing to register children for home schooling for reasons that have nothing to do with the education the child is receiving. Additionally they do so often in cases where there is evidence that failing to register the child or young person will be detrimental to the child or young person's education or health and wellbeing or result in them being neither registered for home schooling nor enrolled in school.

It is the view of the HEA that BoSTES' policies that exclude children and young people from being registered for home schooling for reasons that are unrelated to education, are inappropriate and undermine BoSTES' responsibility to ensure that high standards of education are upheld for home educated students in NSW. The response of families who cannot register their children for home schooling is usually not to send their children to school (there are often compelling reasons why this is not in the interests of the child or is not possible), but to continue to home educate without being registered and therefore without any government oversight of the children's education. An investigation of BoSTES' policies in this regard is necessary.

### **BoSTES does not take sufficient account of disability or additional needs of children and young people in their registration processes**

It is widely recognised that home educated children and young people experience disability and additional needs at a greater rate than the general population of school-aged children and young people. Home educated children and young people in NSW experience intellectual impairments, physical impairments, communication disorders, sensory impairments, autism spectrum disorder, mental health issues, behaviour and conduct disorders, literacy and numeracy disability and difficulties, chronic medical conditions and issues related to being gifted and talented. Many of these disabilities and difficulties have comorbidity and children experience these on a continuum. Often these children and young people are being home educated because schools have not been able to accommodate their needs.

However, in their policies and interactions with home educators and their children, BoSTES has repeatedly demonstrated an unwillingness and/or inability to adjust its policies and practice to account for children's diverse needs as well as a lack of expertise in working with children with disability or additional needs.

There are three areas in which BoSTES should be taking account of the disability and additional needs of children and young people: 1) the registration process should be flexible, 2) those dealing with applications for registration for home schooling must have expertise and knowledge of the education of children and young people with disability and additional needs, 3) BoSTES should actively remove barriers to participation, engagement and achievement for children and young people with disability and additional needs.

The inflexibility of BoSTES' registration processes in relation to disabilities and additional needs is a persistent problem. As has been previously described, the registration process, and in particular the registration visit can be very difficult and even traumatising for some children and young people. The following recent experience of a registration visit is instructive.

*“Louise is 10 years old and has a diagnosis of autism and anxiety disorder. She has a difficult time with people she doesn't know, especially if they come to our home. She can become angry and aggressive, and in the past has attempted to physically harm people that she does not want in her home. Most times when we need a respite carer, the carer doesn't even see her as she will barricade herself in my room and not even come out to eat. She had been prepared as well as I could for the registration visit but when the authorised person arrived, she ran to her room and slammed the door shut. I asked her to come out, but she shouted her refusal, obviously quite distressed. At the end of the visit the authorised person told me that he would recommend the maximum registration period but that he would have to see her- there was no flexibility at all in the requirement. I accompanied him to her room and opened her door- he could have only seen her for a second before she forced the door shut while yelling and screaming. She continued to howl her disapproval for some time and did not come out of her room for a long time after he left. I am very angry about the requirement because, especially given her special needs, it is so important to me to be able to create an environment where she feels safe and secure.”*

An HEA representative who attended this visit as a support for this family stated that she was distressed by what had happened because *“An anxious child retreated to the safest space she knew in the house – her own bedroom. Then without warning a stranger, one whom she had wanted to avoid, appeared at the door to her safe space. This would make it difficult to trust this stranger (and others) in future.”*

Louise's mother has stated that she feels that there should be a way of a child being registered for home schooling without being sighted, *“I do think there should be an exception. And it shouldn't be hard to achieve. It's hard enough already on families that have children with*

*differences and mental health issues, without having to be contortionists to try and squeeze through hoops.”*

The only family in recent years that has been successful in achieving registration for home schooling without the child being sighted had to go through a very lengthy and difficult process to achieve that outcome. The final report allowing for that to occur appears to suggest that a similar difficult process will need to be undertaken for the next registration process for the child.

*“The Authorised Person notes that the particular circumstances for the Authorised Person in assessing the current application for home schooling registration of the Child have relevance for the current time. Such circumstances may not be relevant in assessing any future application for home schooling registration of the Child.”*

These examples are indicative of an organisational culture that is intractably inflexible and unresponsive to the needs of children with disabilities and additional needs.

In the experience of the HEA, BoSTES has a belief that it is not required to make any accommodations for students because of disability or additional needs. An example that illustrates this follows. In this case a mother had asked for the special needs of her child to be considered in her application to register her child for home schooling and explained that her daughter needed to be home educated because of her disability. In response, BoSTES made it clear that they believed that their responsibilities in relation to children’s disabilities are related only to ensuring that the parent accounted for the child’s additional needs in their program and that BoSTES syllabuses provided for disability and not in relation to the registration process itself.

*“Learning difficulties and disabilities are to be addressed in the educational program developed by the parent to meet the needs of the child. Indeed the BOSTES syllabuses and curriculum support materials make express provision to assist in meeting these needs.... The reason for choosing home schooling is not a relevant consideration for the BoSTES.”*

In terms of the registration process, the HEA believes that given the vulnerable nature and complex needs of many home educated children, a sensitive, well-informed and flexible approach is needed. Many children have been deeply traumatised by their negative experiences with schooling. Many children have formed the opinion in school that they are different, do not fit in and are incapable of social and academic success. Many have also been severely bullied and are evidencing symptoms of trauma in anxiety, depression and self-harming behaviours. However, parents commonly feel that their concerns about their children are not taken seriously by BoSTES.

Families also commonly experience difficulties with authorised persons and others within BoSTES that demonstrate a lack of knowledge and expertise in the education of children and young people with disabilities and additional needs. They have done so by discounting the impact the child's or young person's disability and/or additional needs have on their learning and by not adjusting expectations in relation to learning. An example of an employee of BoSTES discounting the impact of disability on a young person's learning follows.

*"My daughter, Ellora has a history of learning and emotional delays due to having experienced abuse and neglect in early childhood. She has been home educated since 6 years of age and has been registered for home schooling on 5 occasions. On each occasion authorised persons were provided with information about her special needs. Although she had not completed her education by the time she turned 17 years of age, BoSTES refused to reregister her because of her age. I appealed against this decision and an internal review was conducted. The internal review upheld the decision to reject the application for registration and an appeal to the NCAT was made. As a part of the NCAT process I was sent a copy of all of the documents assessed as a part of the internal review. Some of these documents had been annotated by someone within BoSTES (apparently as a part of the internal review). The learning plan that I had provided for Ellora's 2013 registration application included the following sentence, 'Because I am a scientist and science is something that I am passionate about, teaching Ellora about science is something that is a part of everyday life and conversation.' Noted in pen directly above this statement are the words, 'But the kid is behind.' It appears that despite repeatedly providing BoSTES with detailed information about Ellora's background and special needs (over more than a decade) and asking that this background be considered in the internal review, not only were her special needs not considered in the internal review but it appears that the existence of her special needs was denied. I was blamed for her being 'behind.'"*

Sometimes the interactions that result from an authorised person's lack of understanding of disability are harmful to children. For example,

*"The AP [authorised person] visit had a terribly negative impact upon my son, who has dyslexia, and had been removed from school because of escalating severe bullying, social isolation and because the school was not meeting his learning needs; towards the end of his time he was waking every morning feeling physically sick about the day ahead. Home schooling has allowed my son to be educated in ways that have enabled him to learn and to largely recover from the trauma he experienced in school. However, he remains frankly terrified of being forced back to school. Before our registration visit he expressed anxiety about the visit, and asked on several occasions, 'Will they make me go back to school?' He needed reassurance from me that everything would be okay.*

*During the registration visit, the AP spoke to my son in ways that fed into his fear of being forced to go back to school. Whereas the AP who had assessed us back in 2009 was very supportive of my son doing the amount of writing that was conducive to him learning, the AP who visited in 2013 was not, communicating directly to him that he must do much more writing, across all subjects, to meet the outcomes. She indicated that his current level was not sufficient, regardless of his learning disability, and made it clear that this improvement would need to be evidenced at the next registration; if he had difficulty writing with pen, then he could type on the computer, but that either way, there must be more text produced. After the meeting, my son again expressed his fear that if he could not write enough he would be forced to return to school.*

*Over the course of the next few weeks, we attempted to increase his writing. We used the AP's suggestion and he did the text writing using the computer. However, because my son has dyslexia, it takes much more time for him to absorb the information that he is taught, to formulate and organise the information in his mind, and then transfer this into a piece of written language. While we went through this extended process, much of the day was eaten up and little other learning was able to take place. This was quite stressful for both of us, as it meant my son began to close himself off from learning, and I felt continuously frustrated that we could not get to other material that he would actually enjoy, engage with, and learn from."*

The HEA considers that as the educational authority tasked with the registration of children and young people for home schooling, BoSTES is bound by the Disability Standards for Education 2005 and their responsibility goes beyond the provision of syllabus and curriculum material, to ensuring all barriers to accessing education are removed for students with disabilities.

It is the HEA's view that BoSTES' management and authorised persons attending to children with disabilities should have knowledge of both the Disabilities Discrimination Act 1992 and the Disability Standards for Education 2005, the latter of which states the following objects;

The objects of these Standards are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.



With these objects in mind, the HEA believes that it is essential for BoSTES, and all authorised persons, to recognise and understand the right of children and young people with disability and additional needs to participate and achieve in home education. The process of registration should take into account the individual emotional, social and academic needs and in doing so remove any potential barriers to accessing home education. This may require adjustment of the registration process and requirements, adjustment of the content material, the process in which the child engages with the content and the means by which the child demonstrates his/her learning of this content. It may also require additional time to complete stages or acceleration in learning areas and additional support services and resources.

In terms of additional services and resources it is also noted that currently there are no provisions for providing support to home educated students with disabilities, essentially denying them access to services that would allow them to participate on the same basis as all other students. Examples are access to literacy programs, assistive technology, diagnostic services and other appropriate support services. Given that according to the Education Act 1990, BoSTES is tasked with the role of the educational authority, this is clearly an area that needs addressing so that all children with disability are able to access education on the same basis as children without disability. As it stands, BoSTES does not even inform families who have children who cannot attend school because of medical reasons about the Centrelink payment for children in just this situation, despite the HEA requesting that they do so.

### **BoSTES appoints individuals with no home education experience or expertise as authorised persons**

Home education is a distinct method of educating children and young people. It has its own history, pedagogy, and philosophical underpinning. It is not simply 'school at home.' However, although authorised persons are responsible for visiting home educating families and assessing their home education plans, they almost exclusively have had no prior experience with home education or specific knowledge of home education. Some authorised persons have never met a home educating parent or home educated child prior to their appointment. This lack of experience has several negative impacts on the regulation of home education in NSW.

First, authorised persons often lack confidence in their assessments. This makes it difficult for them to assess the quality of the education being provided to children, especially when the method of delivery of education diverges most from a school-like approach. It results in them being excessively fixated on the criteria listed on their assessment forms from BoSTES rather than on the education being provided.

Second, authorised persons lack the ability to provide meaningful assistance to applicants for home schooling and often provide confusing or inappropriate advice (for example suggesting record keeping methods that take 1-2 hours per day per student).

Third, home educators are placed in the position where they are effectively expected to undertake 'on-the-job' training of authorised persons. They also have to endure mistakes that authorised persons make as a result of their inexperience.

Fourth, the lack of experience, knowledge, and confidence of authorised persons can result in registration visits being unpleasant and unhelpful experiences. Many home educators feel a great deal of stress in the lead up to registration and many individuals avoid registration altogether.

A symptom of the lack of experience of authorised persons is that the HEA has had to shift its focus in terms of providing support for home educators in NSW. Whereas the HEA has always provided support for parents wanting to know how to home educate, over the last few years a significant amount of time has been spent by volunteer home educating parents in explaining the registration system in NSW, and providing intensive support in the registration process. The HEA now recommends that every individual applying for registration for home schooling have an experienced home educator present during the registration visit in order to ensure that the authorised person acts appropriately. If authorised persons were adequately experienced and knowledgeable, this would be unnecessary, and HEA volunteers could instead focus on providing support for education.

This is not to suggest that all authorised persons are inadequate at their jobs. There are some, who after many years of experience have developed a deep knowledge, understanding and support for home education. These authorised persons are supportive and helpful to applicants for registration for home schooling and home educators who are allocated these authorised persons often enjoy their registration visits and so continue to engage with the regulatory process.

It would be unthinkable for the competency of schoolteachers or the quality of their programs to be assessed by individuals who had no experience or expertise in school teaching. It is similarly highly inappropriate for applicants for registration for home schooling to be assessed by individuals who have no expertise or experience in home education.

Extensive experience and knowledge of home education should be required for appointment as an authorised person in order to ensure quality assessments of applicants for registration for home schooling and to encourage engagement in the regulatory process.

## **BoSTES focuses on compliance rather than educational quality and the needs of children**

BoSTES considers its role to be solely regulatory, and considers provision of support of any kind to be opposed to this function. As BoSTES describes, the role of authorised persons is “not a consultative or mentoring one.”

Parents undertake home education either by choice, or because institutional schooling has failed their child. The rigidity of the registration system, the lack of provision of any kind of support, and the failure of BoSTES to inform applicants of existing support makes home education more difficult than necessary for parents and undermines children and young people’s education.

As a result of BoSTES’ focus on compliance, the training of authorised persons in recent years appears to have focused primarily on how they might ensure that home educators are compliant with BoSTES’ paperwork requirements rather than on how to assess the quality of the child or young person’s education. This has been a source of much conflict and distress amongst home educators who are primarily concerned with providing a quality education to their children. Home educators are of the opinion that those assessing their application to home educate should be similarly interested in the quality of education being provided. It appears that a lack of knowledge and experience of home education, combined with BoSTES’ focus on compliance, results in many authorised persons not being confident in their role. This has resulted in an unhealthy over-reliance on paperwork.

The following experience is an example of a compliance focus opposing good educational outcomes:

*“A 12 year old with significant special needs and severe language and learning disabilities was removed from school before starting high school. He was unable to read after seven years in school. The parent developed a program, applied to home educate and was given a three-month registration. Unfortunately, the registration papers did not arrive for a month, so the child was only taught at home for one month before having to reapply for registration. The mother needed to start teaching her son from the beginning by learning the alphabet.*

*When the authorised person arrived for their second registration visit, she was impressed by how much had been achieved. The child was able to read some things to her, whereas at her previous visit two months prior this had not been possible. However, because the mother was unable to fill out all the outcomes achieved in her paperwork, she was advised to withdraw her application to home educate and return her son to school. This despite the fact that the child was learning for the first time.”*

Many parents similarly experience authorised persons as being uninterested in the quality of their children's education even when presented with clear evidence that parents were providing a high quality program tailored to the needs of the child, describing them as mere 'box tickers'. The following examples are illustrative:

*"The AP was much more interested in ticking boxes and matching everything to outcomes than in assessing the quality of the education I was providing. It was my impression that she would have preferred a display folder with samples of work neatly arranged with outcomes noted down the sides. She was not interested in the special needs or talents of the children, nor in what we might be doing to mitigate or foster these. She was simply interested in ascertaining if I had covered the outcomes for the age appropriate years of education, even though these were not the most appropriate years/stages for these children."*

*"When he gave me six months again I was frankly incredulous. I asked him if he was saying that the standard of my daughter's education was inadequate, all he could say was that he was a regulator, only there to tick off the boxes."*

*"I felt like I was under a forensic microscope, and a task to be processed. The authorised person was eagerly on the look-out for anything that didn't comply with her understanding of the registration requirements. She acknowledged that the development of our son's artistic and writing talents was great, but it didn't count towards our registration. She said we needed to spend more time on other subjects. In particular, we were criticised for not spending enough time on formal studies in science, geography and history. This was despite proof of the adequacy of our science education in the form of an above average ICAS test result and a top band in the NSW Essential Secondary Science Assessment, and the fact that, at 16 years of age these subjects would have been electives for many others his age anyway. Our son has received a well rounded, quality education and we had external proof of this but, in the authorised person's assessment, very little of what we had done satisfied the requirements for re-registration. The impression was given that unless a learning experience was noted in a diary there was no proof that it actually happened. Test results were not considered as proof that an education program in that subject had been delivered. We were given a three month registration period."*

## **BoSTES' processes discourage people from engaging with the regulatory system**

The current NSW registration system is onerous and counter-productive. The only current motivation for registration compliance is a fear of legal consequences. Many families develop a great fear or dislike of the registration process, and may avoid re-registering, seeing no benefits, and only difficulties and stress in the registration process. The lack of interest that BoSTES commonly displays in children's education and needs further discourages families from engaging in the system.

An examination of the comparative registration rates between states reveals the impact of regulatory regimes upon registration rates. NSW has amongst the lowest rates of registration for home schooling in Australia. In fact, only the Northern Territory and Queensland have lower engagement than NSW. The Northern Territory and Queensland registration rates are impacted by the fact that parents have easy access to a large number of private distance education schools as well as government distance education schooling which many parents choose to use instead of registering for home education. This is in contrast to the situation in NSW where government distance education is very hard to access, where there is only a single private distance education school and where children and young people enrolled in interstate private distance education must also be registered for home schooling. In real terms, NSW has the lowest rate of engagement with the regulatory system for home education in Australia.

Regulatory systems in states such as those in Tasmania and Victoria exhibit much higher rates of engagement in the system precisely because these systems are more user friendly to home educators. It is worth noting however, that being user friendly does not mean that the system is not rigorous. The Tasmanian home education system has an extremely high level of oversight and high participation. Through inappropriate regulatory policies and practices BoSTES is failing in their primary duty to ensure that home educated students in NSW receive a high quality education by dissuading people from engaging with regulation at all. The comparison of registered home education populations in all Australian states is shown in the table below.

Registered home educated students per full-time school students 'all-affiliations'

Australian state or territory*	All full-time school students	Registered home educated students	Ratio of home educated students per 1,000 full-time school students
Australian Capital Territory	65,954	252	3.8
New South Wales	1,180,041	3,517	3
Northern Territory	40,412	74	1.8
Queensland	784,224	1,770	2.3
South Australia	262,233	1,200	4.5
Tasmania	80,172	894	11.1
Victoria	913,562	4136	4.5
Western Australia	404,096	2,826	7
Australia Total	3,730,694	14,669	3.9

\*Australian Bureau of Statistics, Report 4221.0, Schools, Australia, 2015.

The NSW government “Better Regulations Guide” includes a requirement that consideration be given to “*administrative compliance costs associated with demonstrating compliance with a regulation (such as paperwork and record-keeping costs) as an example of red tape to be avoided in regulations*”. Clearly this has not been considered in relation to the current home education regulatory regime. We note in particular that the principles of better regulation are said to be “*the cornerstone of the Government’s commitment to good regulation*” and therefore “*must be followed in the development of every regulatory proposal [so that] it is demonstrated that the proposal is required, reasonable and responsive.*”

The OECD has also recognised the importance of appropriate regulatory design, (<http://www.oecd.org/gov/regulatory-policy/46466287.pdf>) noting that three things - understanding of the rules, perceived benefits of compliance with the rules as well as enforcement activities, affect compliance with policy. Rules must be seen to be beneficial, palatable and comprehensible by those a policy is designed to regulate. The current system of home education regulation in NSW fails on each of these measures: people find it hard to understand the educational jargon of the policy document, there is very little benefit to registration and compliance is difficult and counter-productive. The Queensland government recognised similar issues in its own home education regulations as the result of a review in 2004. The report noted that high numbers of unregistered home educators were indicative that regulation did not meet the needs of those being regulated. *“Parents, in the absence of a supportive environment, are choosing in increasing numbers to operate outside of the law. This they do with great reluctance as for all intents and purposes, they are otherwise law-abiding citizens.”*(Queensland government Home Education Review October 2003) . This is currently the case in NSW, whereby parents are increasingly choosing to not engage with the regulatory system.

Overall, the current regulatory regime for home education in NSW may be a case study in what not to do and how not to develop a regulatory system. It is entirely unsurprising that engagement with registration is very low in NSW; indeed it may be considered a testimony to the law abiding nature of home educators that so many do persevere in the registration process despite the high costs and low benefits. Educational theory and regulatory theory, stakeholders and the government’s own policy on regulation all oppose the current system. If the home education regulatory regime were to be presented in a way that was purposeful and proportionate, the HEA considers that compliance would dramatically increase.

It should be noted that recently the HEA has tried to work with BoSTES and to foster a constructive working relationship. It is the HEA’s belief that the more accessible the registration process and more willing BoSTES are to work with the home education community, the more the community will be inclined to engage with their system. This has unfortunately been met with resistance on BoSTES’ behalf- BoSTES has consistently denied that there are issues with their processes and has refused even such simple requests as providing applicants for registration for home schooling who receive less than the maximum period of registration with written explanation for their shortened registration period. Such decisions confirm for the home education community an unwillingness to put the individual needs of children before the policy and procedure.



## **BoSTES management of the home schooling program requires an overhaul**

Regulatory systems that are harsh, onerous, illogical and unrelated to the purpose for which regulation is intended, are often considered to lack legitimacy and therefore suffer from a low level of engagement and compliance. Conversely, a respectful, consultative approach that gives careful consideration to the aims of regulation and the costs of compliance is likely to engender a high level of engagement and compliance. There is evidence that the experience of home educators in NSW corresponds closely to these principles.

BoSTES has the oversight of home education in NSW, and yet is unwilling to account for the individual nature of the students and families with whom it interacts. Its concern is compliance with its own policies. This conflicts with the priorities of home educating parents who value their children's wellbeing and do not see why BoSTES' policies should be prioritised over that. While this fundamental conflict in priority remains, it is difficult to see how the problem of chronic unhappiness with BoSTES and low level of engagement with the regulatory system can be remedied.

Given the low level of compliance with the NSW regulatory system, the harm the registration process is visiting on families and children and the evidence that BoSTES is failing to ensure that children are receiving a quality education, it is evident that the NSW program of registration of children and young people for home schooling must be overhauled.

The HEA recommends that:

- The Home Schooling Unit of BoSTES be removed from School Registration and Accreditation and managed separately. It is the view of the HEA that the focus of the School Registration and Accreditation Unit on the compliance of institutions with policy is behind many of the difficulties experienced in the management of the home schooling program.
- BoSTES' Home Schooling Unit be managed by individuals with extensive home education expertise, and base assessments only on the quality of the home education program to be delivered.
- Individuals undertaking assessments of applications for registration for home schooling should have extensive experience and expertise in home education.
- There should be ongoing consultation and timely communication with the home educating community.
- That all authorised persons assigned to children with disabilities and additional needs should have knowledge of the Disability Discrimination Act and the Disability Standards

for Education and an understanding and an awareness of these children's right to access education on the same basis as other children. This may require consideration of the necessary adjustments and accommodations and access to resources and additional support services in order to achieve this.

- That up to date information be provided at registration about local home education networks, Assistance for Isolated Children funding and access to support for students with disability and additional needs.
- That applicants undergoing the registration process should be provided with support and encouragement during home visits and interactions with the Home Schooling Unit, to enhance, rather than hinder the quality of education provided to home educated students.

HEA Committee

Vice President

