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Global Perspectives on Home Education in the 21st Century

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Chapter 15

Reliable or Risky?

Competing Arguments Framing Home Education's Regulation

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ABSTRACT

The global and growing phenomenon of home education is regulated differently in different countries and different states. Where is it legal the regulatory burden on home educators ranges from low to moderate to high. A range of commentators, including home educators, work to shape the frames through which home education is understood and subsequently regulated. Using an illustrative case study, this chapter shows that regulation impacts on child wellbeing and that home educators take different motivational postures based on a range of factors, of which their relationship with the regulator is one. The degree to which regulators cultivate a cooperative relationship is proposed as a critical factor in developing a positive regulatory environment. Co-production of home education regulations, as was previously undertaken in Tasmania, Australia, is presented as an effective and more acceptable approach to regulation. This is recommended as a model of practice to be undertaken in other settings.

INTRODUCTION

Home education, that is, the provision of children's mandatory education from a home base rather than within an institutional setting (school), is a global and growing phenomenon. Although it is not always easy to tell what should be counted as home education and what the accurate figures are, there are reported increases in home education in Australia (English, 2019; Slater, Burton, & McKillop, 2020), Canada (Bosetti & Van Pelt, 2017), China (Sheng, 2018, 2019), England (Foster, 2019), Iran (Attaran, Maleki, & Alias, 2013), Israel (Guterman & Neuman, 2017), Malaysia (Alias, Siraj, Abdul Rahman,

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& Dewitt, 2017), and the United States (Jolly & Matthews, 2020; Ray, 2017). This is by no means an exhaustive list. Home education increases have been driven by a range of parental motivations, including pedagogical philosophy, religious and cultural conviction, and children's educational needs (Jolly & Matthews, 2020). At the same time, precise quantification is impossible due to some jurisdictions, such as the United Kingdom, not requiring registration (see, for example, de Carvalho & Skipper, 2019; Foster, 2019; Office of the Schools Adjudicator, 2020) and others, including Australia, where some families choose not to engage with authorities (see, for example, Jackson, 2017; Liberto, 2016; Select Committee into Home Schooling, 2014).

While many argue that for most of history children have been educated in non-school settings (see, for example, Ray, 2017; Villalba, 2009), home education in its current form is most meaningfully understood in the context of the development and expansion of the modern state, one of the cornerstones of which is the universal education of children (Bloch, 2003; Rury & Tamura, 2019), generally in schools. In addition to being a state strategy for forming the productive, responsible and governable modern citizen (Bloch, 2003), children's education is a critical element of the foundations of nationhood (Rury & Tamura, 2019) and the formation and expression of a national identity (Gill & Howard, 2009). Therefore, how, where, and by whom children are educated is a matter of concern to each state. This state attention is also turned to home education as a contemporary feature of the ever-changing landscape of family–state relationships and of children's education; although, as Jackson (2014) notes, it is little understood by regulators and educators.

Children's care, health and education have always been concerns for families and communities. Earlier arguments, such as by Ariès (1962), that childhood as a category of community concern did not exist, have been disputed and refuted – children's lives and development have always mattered to the adults around them (Pollock, 2017). Children have learned and been taught in their communities in a range of ways across time. Pre-colonial First Nations' contexts of the Western hemisphere and the Pacific included instruction in and through 'place', performance, and text (Lawrence, 2019), and there are recorded indications of education systems from China around 2,000 BCE (Rury & Tamura, 2019). More recently, schooling systems designed with the progression of the nation state as a key motivation originated in Prussia in the late 1700s, then extended across Europe and North America, and then globally in the 19th and 20th centuries (Rury & Tamura, 2019).

Campbell and Stephenson (2019) describe Australia's post-colonial development of schooling systems across the states, which arrived after World War II at the provision of universal primary and secondary education. Institutional education began with government provided 'orphan schools' at the turn of the 19th century. There were subsequent attempts to introduce state-based public education from the 1830s. This goal was finally achieved in the country's colonies in the 1870s. This journey of education provision included a constantly shifting state relationship with religious and private education sectors that lurched from state dependency on these sectors, to rejection of them and, finally, to integration alongside public education. This movement occurred alongside a perennial emphasis on vocational education and 'civilising' unruly (and Indigenous) children (Campbell & Stephenson, 2019). Similarly, erratic, contested, variable, and evolving pathways have been identified in Europe (Albisetti, 2019) and North America (Beadie, 2019). Colonisation was a significant trigger for systematic schooling in a range of countries in Asia (VanderVen, 2019), Africa (Kallaway, 2019), and Latin America (Espinoza, 2019), where national education systems were expanded and finalised following independence. A common feature across different countries was the origin of widespread institutional schooling in the early to

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mid-1800s and the post–World War II (or post-independence) completion of universal, compulsory, and extended education systems focused on nation-building.

While some children have always been educated outside of schools due to lack of reach, lack of effective policing, religious conviction, or schooling’s lack of perceived value to children, it is in the context of state/nationalised and legislated compulsory education systems that education at home becomes a potentially problematised parental choice and a subject of state interest – a matter for laws, regulation, and monitoring. This chapter considers approaches to home education laws and regulation across the globe and discusses the relationship between home educators and the state regulation of home education in different countries. It particularly considers conflicting voices seeking to shape regulators’ views of the ‘social effects’ (Sheehy & Feaver, 2015, p. 395) of home education, where a focus on state responsibility for children’s protection is being ever more strongly emphasised. While this will be discussed using available literature as the basis for international comparison, a case study is included as a way to examine these processes more closely. The case study describes regulatory practice changes in the state of New South Wales (henceforth NSW), Australia, and a subsequent parliamentary inquiry into home education in the state. The case study examines the position that state agencies took towards home-educated children’s education and welfare and strategies to achieve this. It is used to illustrate how home education regulation in NSW impacted educational practices and child learning and wellbeing, finding that non-cooperative regulatory change lead to harm. It highlights the potential negative consequences of developing regulation to protect children as a category (the macro perspective), without working with stakeholders to understand the potential impacts on individual children (the micro context). The chapter concludes with a consideration of possible alternative methods of home education regulation, built through meaningful cooperation and partnerships between state actors and the family.

A note on language: This chapter recognises a number of different terms used to describe home education, including *home schooling* and *homeschooling*. In this chapter, the term *home education* is used predominantly in order to uncouple the notions of education and schooling and to recognise that many home-educating families emphasise the former rather than the latter. Where *homeschooling* or *home schooling* is used in the chapter, it is usually in reference to the language used in formal documents such as law or regulation.

BACKGROUND: HOME EDUCATION LEGISLATION AND REGULATION AROUND THE WORLD

In every country, home educators bump shoulders with lawmakers, policy makers, and regulators with varying frequency. These relationships, sometimes amicable and sometimes fraught, take different forms across time and in different countries, as a growing body of literature on home education regulation reports (see, for example, Allan & Jackson, 2010; Carlson, 2020; Guterman & Neuman, 2017; Jackson & Allan, 2010; Kunzman, 2009; Martin, 2010; Varnham & Squelch, 2008). The nature of this relationship starts with the degree to which home education is legally permissible, but continues through the degrees and forms of home education regulation.

Home education is illegal in Germany (Reimer, 2014) and Greece (Bhopal & Myers, 2016) and not legally allowed (but not illegal) in Spain (Blok, Merry, & Karsten, 2017). In Sweden it went from being marginal but possible (Villalba, 2009) to effectively banned, following a tightening of the country’s education laws in 2011 (Blok et al., 2017; Dodillet & Christensen, 2020). In The Netherlands it can only

be accessed in exceptional circumstances through an application for an exemption from institutional schooling based on a child's special needs (Blok et al., 2017). Though not expressly forbidden in China, home education is effectively illegal as it is compulsory for children to attend a school, and any educational 'institution' must gain authorisation from the provincial body to operate (Sheng, 2018). Thus far, home-educating groups have not been successful in achieving authorisation (Sheng, 2018). Similarly, laws that make education compulsory and prevent education in institutions other than state schools make home education effectively illegal in Iran (Attaran et al., 2013).

There are some countries in which the legal and/or cultural status of home education is ambiguous. Although not legally enshrined in South Korea and Japan, for example, home education is accepted in practice by authorities (Sheng, 2018). In Israel, it is an option if a parent applies for, and is granted, exemption from compulsory school attendance (Pearlman-Avni & Grayevsky, 2019). The application must include an educational plan and approach to assessment. In France, home education has been a legal education option since the introduction of compulsory education laws in 1882, but there is a commonly held belief that school attendance is compulsory (Bongrand, 2016), based on a misinterpretation of the compulsory requirement of educational *instruction*, which may occur outside of institutional schooling. The effect is that home education in France is relatively uncommon.

In a series of European countries such as Austria, Belgium, Estonia, France, Italy, Portugal, Poland and Norway, as well as in Australia, the United States, New Zealand, Canada, and the countries of the United Kingdom, home education is legal, though its regulation varies. Variation occurs between these countries, and, where education law is made at the state (e.g., Australia and the United States) or provincial (Canada) level, there is variation within countries. Across the United States, home education is legal, although the states' regulatory conditions vary widely (Carlson, 2020; Miller, 2014). Some states have no requirement for parents to provide any details to authorities; others tightly regulate home education. Similarly, in Canada, home education is legal in all provinces; it is highly regulated in some (Alberta, Saskatchewan, and Quebec, for example) and scarcely regulated in others (for example, in British Columbia, Ontario, and Newfoundland & Labrador) (Bosetti & Van Pelt, 2017). In England, there is no requirement to register to home educate children and no requirement to inform authorities, though local authorities are guided by the Education Act 1996 to make contact with families and enquire about the education being provided when they become aware of a child being home educated (Foster, 2019; Garcia Olivia & Hall, 2018). This situation is similar in Wales (D. Forrester, Maxwell, Slater, & Doughty, 2017). In Australia, there are diverse systems of regulation, although each state has a requirement that parents seek permission to home educate and to have their education plan approved (see, for example, Jackson, 2017). Where home education is legal, regulatory regimes vary between high, moderate, and low demand (Blok et al., 2017).

Bosetti and Van Pelt (2017) and Blok et al. (2017) use a typology of high, moderate, and low regulatory requirements to categorise the regulations in different jurisdictions. Low regulation occurs where the requirement for parents is little more than notifying authorities of the intention to home educate and the children involved. Moderate regulation involves the formal recording of children being home educated and a submission, by parents, of the education plan being followed. High regulation includes the requirements for moderate home education as well as the regular review of children's educational progress, which may involve sitting for compulsory testing and more regular following up of families. High regulation approaches can lead parents to adopt a 'school at home' approach as opposed to other methods of home educating that foster greater flexibility; this flexibility is enabled by low and moderate regulation.

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While home education registration is clearly shaped by the degree to which there is a legal requirement to register, home-educating families' *willingness* to register with authorities appears to be affected by the qualities of regulatory systems. Neither high nor low levels of regulation lead automatically to higher or lower levels of registration. Kunzman and Gaither's (2020) review of home education literature relating to the United States found no consistent relationship between regulatory regimes and levels of home education registration. Adding a further level of detail to that finding, Bosetti and Van Pelt's (2017) reporting of Canadian registration levels in different provinces indicates that only where there is a commensurate level of support for families does higher regulation lead to high registration. Specifically, both Alberta and Saskatchewan have high levels of home education regulation; at the same time, they provide financial support to home-educating parents. Home education registration is comparatively high in these provinces. In contrast, Quebec has a high regulatory burden, no support, and the lowest level of home education registration compared to other forms of education. Within Australia, the highest level of home educator satisfaction and engagement with the registration system was in Tasmania (see, for example, Home Education Association, 2014, 2016), where the government worked in partnership with home educators to develop and then implement a model of registration and support (Carlos, 2017; Jackson, 2017). Where home education is legal in Europe, there is generally high regulation, no clear indication of support, and relatively low uptake across each country (Blok et al., 2017). This, though, may be cultural rather than a consequence of the regulatory process.

What constitutes home education and whom should be counted as home educating are critical questions. Should every parent claiming to be home educating be accepted as doing so, or should there be some criteria? Should only those who are registered be counted, or should people who are actively engaged in education, though not registered, be included? What, then, does it mean to be actively engaged in education? In engaging with these questions, this chapter includes those who are engaging with their children and their education, whether registered or not. The authors make a critical distinction between this situation and children whose parents are avoiding contact with state authorities by claiming they are home educating, although in no way attending to their children's education or welfare. In the latter case, children may be subject to various forms of abuse, with disengagement from schools as one way to avoid contact with the outside world. Child deaths in Australia (NSW Ombudsman, 2009), England (Bhopal & Myers, 2016; G. Forrester & Taylor, 2011), and Wales (D. Forrester et al., 2017) are highly visible examples of this possibility. In these situations, parents claimed to be home educating to prevent education and child welfare authorities from seeing their children. Such cases have led to regulatory review in the settings where they occurred, although the degree of legislative or policy change has been limited. These combined circumstances reflect the highly complicated legal and regulatory landscape of home education. They indicate some of the reasons state bodies may be concerned about home education, especially when there is public outcry over harm to a child whose parents have used the claim of 'homeschooling' as a shield against engagement with authorities.

SHAPING HOME EDUCATION REGULATION

Regulation is an essential strategy of the modern, (neo)liberal state (Pierson, 2011), in which responsibility for the creation of public goods and the delivery of public services has, to an ever-greater extent, shifted from provision by the state to state oversight of provision by private enterprise (Scott, 2017). In this latter circumstance, the role of the state involves enabling enterprise to flourish, while, at the same

time, setting the terms upon which that enterprise can operate (Foucault, 2008) and, in many but not all cases, restraining the operations of that enterprise through regulation and enforcement (Pierson, 2011; Scott, 2017).

The purposes of regulation are to direct social practices (what people do with/to/for others – including people, land, structures, or animals) and/or to achieve or prevent social effects (the outcomes of social practices) (Sheehy & Feaver, 2015). In any regulated situation, there must be a determination that the social processes or the social outcomes are matters of concern enough for the state to intervene (Sheehy & Feaver, 2015). Setting the ‘frame’ for regulatory subjects (Sheehy & Feaver, 2015) can be a high-stakes contest between diverse parties, each representing different perspectives on the subject and seeking to communicate its view of the issues. Such arguments are common in the area of home education regulation, where claims and counter-claims are put forward about a range of issues, including educational quality, student outcomes, whether the right to home educate is ensured by international conventions or countries’ constitutions, social costs, or benefits of home education, and the safety and wellbeing of home-educated children (see, Jackson, 2017; Kunzman & Gaither, 2020; Ray, 2017 for reviews of some or all of these issues).

Debates about home education occur at the community level as well as in published academic writing. Regarding home education outcomes, for example, numerous studies in the United States and Canada have examined educational outcomes for home-educated students and found homeschooling (as it is often referred to there) to be at least as effective educationally as school education (see, for example, Ray, 1990; Ray, 2013). Questioning the quality of that research, however, Gaither (2017a) argued that despite the posture of academic distance, Ray’s work is not ideologically neutral, being advocacy-oriented and financially supported by the Home School Legal Defense Association. Other researchers surveyed adults who had been unschooled (a method of home education that is substantially child-directed) for at least the final two years of their formal education and found the majority of participants experienced positive educational, social, university, and work outcomes (Gray & Riley, 2015; Riley & Gray, 2015). In this way, the argument that home education, including unschooling, can provide an education of at least satisfactory and equal quality is advanced. Bartholet’s (2020) critical review of home education research, however, argued that contrary to the findings of advocacy-oriented research, children who were unschooled performed less well in educational-outcomes studies than the general home education population or students in the public schooling system. Challenging the validity of this research model, Neuman and Guterman (2016, p. 4) argued that, for home educators inclined towards constructivist and inquiry-based approaches, “the goals of education differ from those of school education and it is therefore not logical to assess their achievements in the same way”.

The right to home educate is also contested. Donnelly (2016) examined court rulings relating to the prevention of home education in Germany and Sweden and argued that the court rulings were contrary to human rights treaties and conventions, which state that a child has a right to education and, parents have the right to direct that education. Reimer (2014) outlined the existing legal argument in Germany, that the state’s duty to educate overrides home education as parents’ means of expressing their enshrined duty of care. Reimer argues, however, that German law could be interpreted such that home education fitted easily with the broader constitutional requirements to support a diverse, pluralistic society, with home educators representing part of that diversity and needing, as a group, to be socially included. In contrast with these claims, Fineman and Shepherd (2016) provide an argument based on ‘vulnerability theory’ that home education is dangerous to both child and society as it removes the inherently ‘vulnerable’ individual from the protective and developmentally enabling relationships provided by their com-

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munities and the state. They argue that home education is ineffective, prevents the possibility of social pluralism, and ultimately subsumes the child's rights to a broad educational experience to the parents' preference for isolationism. Similarly, Reich (2002) argued, without support from reliable evidence, that 'customised' home education shields children from the benefits of pluralism, and later impacts their broader civic engagement. The claim is that both the child and community/society lose. The solution, according to Reich, is tighter regulation, while Fineman and Shepherd argue for home education's abolition. Prohibiting home education in all but exceptional circumstances is also Bartholet's (2020) aim. Bartholet (2020) argues that research promoting the virtues of home education is generally of limited quality and often partisan, arguing instead that home-educated children are a population at high risk of suffering abuse and are particularly vulnerable to being hidden from outside scrutiny. Case examples are presented as evidence of this issue. The arguments presented by these authors contrast home education with school-based education. Illustrating a possible limitation of such approaches, Fineman and Shepherd, Reich, and Bartholet all condemn home education without applying the same critiques of divisiveness, poor educational outcomes, and harm to children, to schools. Their arguments may be an example of the claim by Blok et al. (2017, p. 417, emphasis in original) that "Too often, critics of home education make hypothetical claims about it – what *might* happen – and pit these against the most idealized aims of schools: what *should* happen".

Home educators in different countries have been drawn or pushed to home educate to meet their children's education and/or wellbeing needs. When home-educating parents are faced with regulations that limit their ability to respond positively to their children's needs, they have engaged directly in lobbying as a response. They have sought to influence home education laws and regulations, leading some to observe that lobbying is a particular skill of home educators. According to D. Forrester et al. (2017) home educators "are one of the most effective lobbying groups in the UK", a view echoed in relation to the United States (Bartholet, 2020). Similarly, in Australia, home-educating parents have vigorously engaged with law and policy makers in different states and lobbied to influence regulatory processes (though with differing levels of success) (Jackson, 2017). This activism has largely sought less-intrusive regulatory processes that give the greatest possible meaning to the principle that parents are responsible for the form and delivery of a child's education.

The model of regulation development presented by Sheehy and Feaver (2015) suggests that regulation is not built through an idealised model of evidence-based development, but through the degree to which law makers and regulators are convinced of the social effects arising from social practices. Based on this model, this chapter suggests that multiple and diverse parties contribute to social understandings of home education, and the degree to which these reflect concerns of the modern state and interlock with broader social discourses shapes home education regulation. In keeping with these findings, the case study below shows how a 2014 parliamentary inquiry into home schooling in NSW, Australia, was less moved by individual testimony that home education met children's education and wellbeing needs and was more moved by a discourse of school-based education's provision of oversight of children and its relationships with child protection.

CASE STUDY: REGULATORY CHANGES AND SUBSEQUENT PARLIAMENTARY INQUIRY INTO HOME SCHOOLING IN NSW, AUSTRALIA, 2014

In New South Wales (NSW), Australia, the Education Act (1990) is founded upon four principles:

- every child has the right to receive an education,
- the education of a child is primarily the responsibility of the child's parents,
- it is the duty of the State to ensure that every child receives an education of the highest quality,
- the principal responsibility of the State in the education of children is the provision of public education.

Home schooling (as it is referred to in the legislation) is embedded in this Act as a legal option, equal to school-based education. To home educate a child legally in this state the parent(s)/guardian(s) must apply to the regulating body (currently the New South Wales Education Standards Authority [NESA]; previously it was Board of Studies [BOS] and then Board of Studies, Teaching Standards [BOSTES]), which will assess the application and, if it is successful, grant registration for up to two years. NESA sets the requirements for registration. The requirements must be consistent with the Act. These requirements are published in the Guidelines for home schooling registration in NSW (NSW Education Standards Authority, 2018). As part of the application assessment process, the parent(s)/guardian(s) must develop a learning plan based on the NSW curriculum, and a home visit will be conducted by an Authorised Person (a representative of NESA). The Authorised Person will assess the learning plan and see the child. Applying the typology used earlier in this chapter, NSW may be considered to have a moderate level of regulation for home education.

Since 2004, home education regulation in NSW has required the educational program to be based on the NSW curriculum (NSW Parliament, 2004). During 2011/12, home educators noticed changes in practice during the registration process. When this was raised with the regulator, it was denied until 2013, when an updated version of the registration guidelines (the Information Package [IP] as it was known at the time) was published. The revised IP contained a new emphasis on inflexible compliance with all regulatory requirements, including adherence to a school-like model of learning (Home Education Association, 2014; Name Suppressed, 2014c), as well as an insistence that home-educators had a timetable detailing nominated hours of schooling, an enforcement of a particular scope and sequence in curricula, the prohibition of the inclusion of activities taught outside the home and by anyone other than the parent in the educational plan, and the exclusion of travel-based learning (Home Education Association, 2014; Name Suppressed, 2014c). Flexibility had been restricted – home educators were required to adapt to meet the child's learning needs, but were now required to seek approval for each change. The BOSTES produced a companion question and answer document, but this contradicted the IP in a number of areas (Home Education Association, 2014). Home educators contacted the regulator to express their concerns and request withdrawal of the IP. Parents claimed that the changes significantly impacted their ability to practise according to their pedagogical philosophy (unschooling, for example), and that they were onerous and made it difficult or impossible to meet many children's learning and wellbeing needs (for an extended description of these changes, see Home Education Association, 2014; Liberto, 2016). Home educators' concerns were not addressed. Consequently, they lobbied the government about their concerns, the outcome of which included a government inquiry – The Select Committee into Home Schooling (hereafter referred to as the Inquiry). The committee members comprised three members of the government of the day (the Liberal/National Coalition), two members of the opposition (the Labor Party), one member from the Christian Democrat Party (the committee chair), and one from The Greens (the deputy chair). The terms of reference of the inquiry covered the local and broader background of home schooling; its context, such as motivations to home educate and outcomes for children, including

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possible risks to the safety or wellbeing of home-educated children; its regulation; support needs of parents; and home educators' engagement with the regulating body.

The Inquiry received an unusually high number of submissions (276), including from individuals and groups, as well as submissions from associated government departments such as the Departments of Education and Communities and Family and Community Services, and the BOSTES/NESA. Submissions ranged from one page to hundreds of pages (see, for example, *Hear Our Voices Australia*, 2014; *Home Education Association*, 2014). They addressed individual terms of reference or multiple terms, depending on the focus of the person or group making the submission. Every question the Inquiry sought to address was covered in some form through the submissions. Submissions also took an individual or collective approach. That is, submissions addressed the issues as they related to a particular child(ren) of a particular family (see, for example, *Name Suppressed*, 2014a, 2014b), or to the broader community of home-educated children (see, for example, *Hear Our Voices Australia*, 2014; *Home Education Association*, 2014).

The questioning of the witnesses called to give evidence to the Inquiry showed a range of concerns from the Inquiry Committee members. Specifically, the Committee's questions focused on areas such as the nature of content taught in homes (including teaching creationism, especially in the context of science, or to the exclusion of evolution); the use of unschooling as an education method; concerns that home-educated children may be experiencing, or at risk of, harms such as abuse and neglect and, related to this, the possible isolation and non-visibility of home-educated children (to an outside protective and surveilling eye); parental reasons for choosing home education and the degree to which these reflected religious ideologies or failures in the current schooling system; and sources of conflict between home educators and the regulating authority. A significant thread of questioning to government agencies concerned the degree to which systems were set up to quantify the number of home-educated children as a group experiencing (or not) abuse and neglect. The Committee sought limited information from witnesses about the ways in which home education met children's needs and very little about possible improvements to the regulatory system. Questions to witnesses about perceived dangers to education and wellbeing from home education were given a higher priority than educational quality, children's flourishing, or home educators' preferred models of regulation. Thus, less emphasis was given to the experiences with positive outcomes of home education.

The final recommendations from the Inquiry included that the feasibility of part-time attendance at school be investigated; research into home education be increased, including into the practice of unschooling and its outcomes; that a dedicated home education support role be created within the office of the regulator; that a 'home schooling consultative group' be formed and regular consultation with home-educating parents be undertaken by the regulator; that a request be made for home education to be included in the national census; and that systems be improved to identify home-educated children experiencing abuse and neglect.

Of the twenty-four recommendations from the Inquiry, eleven were fully supported by the Government of the time, and a further four supported either in part or in principle. The recommendation to have an advisory group for the regulator, which included home educators, was supported, as was the investigation of part-time school options, the conduct of further research into home education, and the increased collection of child protection data in the home education context. Some issues that home educators most advocated for were included in the recommendations: not referring to home education as 'home schooling' for example, a comprehensive review of the registration process, and the instigation of an

immediate provisional registration period for children who had left schools and were not yet formally registered. However, these were not supported by the government.

While regulation, law, and policy regarding home education have been written about extensively (see, for example, Gaither, 2017b; Jackson, 2017; Kunzman & Gaither, 2020), home educator views and/or experiences of these systems have been less researched (see Liberto, 2016, as one example). An inquiry such as this, therefore, can serve as primary source data, providing a rare opportunity to examine diverse perspectives on home education as well as home educators' views about the regulator and the regulatory regime. Home educator submissions to the Inquiry described educational and wellbeing benefits to children gained through home education, including educational outcomes and deepening family relationships. Parent descriptions of their experiences with the regulator were a mix of positive, negative, and neutral, while some people talked about avoiding the regulator altogether (for a good reflection of each of these perspectives, see *Hear Our Voices Australia*, 2014; *Home Education Association*, 2014).

Regarding regulation, the NSW home schooling inquiry showed that home educators have a range of 'motivational postures' (Drahos & Krygier, 2017). Motivational postures are the positions a regulated person or group takes with regard to the regulators, their rules, and their processes. Accommodating postures signal satisfaction with, or at least acceptance of, the regulator's requirements. Defiant postures reflect frustration or anger towards the regulator. Postures range from resistance to dismissiveness and game playing – treating the regulator as irrelevant or seeking to outwit the regulator (Drahos & Krygier, 2017). Submissions showed that some home educators engaged and were happy with the registration process, finding it helpful and supportive, or at least acceptable. Some went through the motions, providing all the paperwork, including education plans, in order to get the desired result (registration) and then educated in their preferred manner, rather than the way in which they would have to if they complied with the registration requirements. Others reluctantly complied, experiencing the process as stressful and fraught with tension. Often, people in the latter group received support and assistance from experienced home educators in order to navigate the registration process (*Home Education Association*, 2014). Still others stood in defiance of the regulator by refusing to seek registration for their children on the basis that they did not recognise the regulator's authority, or decrying the process as too onerous for no substantive benefit or as actively harmful to the child or family.

A review of the final report of the Inquiry showed that evidence of children's achievements in home education, along with home educators' concerns and suggested solutions to improve the regulatory process, were overlooked (Gribble, Krogh, Watson, & English, 2014). Rather, a particular perception of children's safety and wellbeing dominated the Committee's deliberations, during which the notion of "children's paramount interests" (*Select Committee into Home Schooling*, 2014) was prioritised over parents' responsibilities for their child's education (Gribble et al., 2014).

The Inquiry, while focused on home education, reflected disparate positions on how to achieve children's best interests. All parties can be understood to be concerned with promoting positive educational experiences and outcomes through safe learning environments that support children's social, emotional, and intellectual development, as well as physical safety. Although common aims exist between parents, legislators, and regulators, the means to achieve them is contested. This tension reflects the difference between theoretical concerns for children as a category (the macro view) and the intimate lived knowledge of and concern for the needs of individual children (the micro view). The Inquiry demonstrated that a decision to home educate led to distrust that those parents would act in their children's best interests, in spite of evidence that home education supported children's wellbeing.

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Ultimately, the final report of the Committee (Select Committee into Home Schooling, 2014) frames parents as potentially serving their own interests and home education as potentially risky to children's education and safety. As an example, on page 26 of the report the *Committee Comment* states:

The committee considers that s.4(b) [the Education Act's principle that "The education of a child is primarily the responsibility of the child's parents"] has been applied inappropriately by some parents as a means of asserting a right to educate their children, irrespective of whether it is in the best interests of the child.

In another example, the *Committee Comment* on page 47 of the final report acknowledges home education to be legal and states that a high-quality education is important for children's development, whether this is achieved in school or at home, but the report avoids stating that home education can provide a quality education.

Further emphasising concerns about educational quality, the *Committee Comment* on page 16 of the report states:

The committee is concerned that taken to its extreme, children who are 'unschooled' may not achieve even basic levels of literacy and numeracy. The application of 'unschooling' may constitute educational neglect.

Further, on page 146 of the report:

The committee accepts the argument that home schooled children are not exposed to the same level of independent expert surveillance that occurs in a school. The committee is also concerned by the suggestion that the low rates of mandatory reporting amongst children who are home schooled may related [sic] to low levels of detection.

In these ways, home education was framed as risky in terms of educational outcomes, and safety and surveillance, particularly at school, was emphasised as a means to protect children. Parent evidence showing that parents often acted to protect their children from harm when removing them from school and choosing to home educate was treated as partial (in both senses of the word) and carried less weight for the Committee. The Committee, while providing limited acknowledgement of a flawed process in the redevelopment of the IP, treated home education regulation as unquestionably positive in its effects, ensuring 'educational quality' and at least some level of surveillance of home-educated children. The possibility that regulation, when poorly designed and indiscriminately applied, could be detrimental, was not considered, despite the evidence parents presented. Offering a close view of the impacts of regulatory practice changes, autoethnographic research by Liberto (2016), undertaken subsequent to the Inquiry, shows a series of detrimental effects arising from the changes in regulatory practice on the children she was educating.

As an eclectic home educator, Liberto (2016) reported using a range of strategies to meet the educational needs of her children, who had a range of learning differences, including gifts and challenges. While she noted that her eclectic approach occasionally resembled 'school-like' education, this was a 'skin-deep' resemblance and often included 'child-led and interest-inspired learning'. This approach is more aligned with constructivist approaches to education than curriculum-driven approaches, seeking

to draw out learning from the process of activities rather than the educator bestowing information and knowledge (Neuman & Guterman, 2016). This approach provides a bespoke education targeting learning and wellbeing needs, rather than one driven by an external decision about what, how, and when children should be learning specific content.

In response to the new regulatory requirements limiting pedagogical flexibility, Liberto's practices had become unresponsive to her children's learning and wellbeing needs, as she had become focused on box-ticking (Liberto, 2016). She found herself forcing her dyslexic child to complete far more book-based activities than usual, causing exhaustion and a compromised ability to learn. "The more tired she became the less she learnt and the less time was available to focus on methods that worked for her and consolidate her learning" (Liberto, 2016, p. 6)

Liberto (2016) identified that complying with the dictates of the more school-like education model had turned this child's learning differences into learning disabilities. A similar circumstance was reported to the Inquiry by Hayes (2014). Prior to the changes, her child had more successfully and extensively engaged with the curriculum. Now, this mother was in a bind – adapt to her child's needs or comply with the regulatory requirements that inflexibly required practices that impeded learning for her child, the consequence of which might be an inability to meet the requirements for registration. This bind aligns with the notion of 'moral injury', defined as 'a shattering of trust that follow[s] the [enforced] betrayal of "what's right," in a high-stakes situation, where the betrayal was sanctioned by someone in a position of legitimate authority' (Shay, in Gilligan 2014, p. 91) – a parent required to deliver education in ways that cause her child to fail in order to achieve registration, rather than implement strategies shown to be enabling and effective, for example. Similarly, Haight, Sugrue, and Calhoun (2017) described child protection workers who had a moral duty to protect children and parents from harm while being part of systems that caused harm or working alongside colleagues whose actions were harmful. Liberto's (2016) research provides a lens through which to observe the regulator–educator relationship and the ways in which children's experiences are shaped by the action of the former on the latter.

From the case study and the literature presented above, it is possible to propose some important perspectives on home education regulatory bodies and home-educating parents' responses. First, legislators and regulators of home education may perceive that they are providing regulatory structures that promote a quality education and children's safety, while setting conditions that may compromise children's wellbeing and education. Second, home educators hold a range of motivational postures, with resistance, dismissiveness, and game playing being at least as likely as acceptance, depending on the nature of regulation. Third, home educators have an on-the-ground experience of the conditions that make home education effective. Finally, home educators tend to be treated with suspicion by legislators and regulators (as well as researchers and policy makers), perceived to be serving their own interests, while state bodies perceive themselves as having a less partial view of children's 'best interests'. Taken together, this helps us see a polarising setting where regulation is formed by one group (the state) and forced upon another group (parents) in order to oversee children's present and create children's futures. Parents, experiencing a threat, are likely to resist to the degree possible. However, it is possible to view this situation differently: to see home educators and regulators sharing an interest in children's education, safety, and wellbeing at both a collective (macro) and individual (micro) level. Theoretically, this should offer a starting point for the co-design of regulation to the benefit of all.

CO-DESIGN OF REGULATION

If one accepts that some form of regulation of home education is reasonable, an important question is how this regulation should be developed and implemented. There are lessons from other regulatory systems from which home education regulation can learn. Writing about taxation systems, with particular reference to the Australian situation, Langham and Paulsen (2015) differentiate compliance approaches built on enforcement only and those built on engagement, involvement, and trust. They identify that people avoid or don't comply with the payment of taxes when the requirements are difficult to understand or follow (that compliance is too difficult), or the process or outcome are perceived as irrelevant. These authors state:

The strategy to control or mitigate the risk [of non-payment of taxes] involves building relationships of trust and cooperation with the community, developing products and processes collaboratively, and providing differentiated treatments to facilitate compliance (Langham & Paulsen, 2015, p. 382)

Langham and Paulsen (2015) present an outline of the International Association for Public Participation Spectrum of Engagement framework and show how this informed the Australian Taxation Office's approach to engagement. Referenced back to Arnstein's (1996) ladder of citizen participation, the spectrum identifies engagement, moving from the lowest level of power sharing to the highest. This looks like:

- 'informing' – keeping people reliably updated about the situation and proposed solutions
- 'consulting' – regularly asking people what they think about the situation and the proposed solutions
- 'involving' – ensuring that public concerns and issues are understood, considered, and responded to throughout the regulatory design process
- 'collaborating' – working in partnership with people to determine what can, should, and will be done
- 'empowering' – handing over to the people the decision about what should happen

Different levels of engagement are appropriate for different situations. This chapter argues that collaborating (co-designing) is the approach that should be used for the development and implementation of home education regulation. One benefit of this approach is to reduce currently high levels of disengagement.

Co-production (see, for example, Blomkamp, 2018; D. Forrester et al., 2017) involves the active sharing of power and responsibilities between parties and moves beyond tokenistic consultation, where the consulting body has no requirement to involve the consultant group in forming the issues to be discussed or to take its suggestions seriously. The collaborative development of regulations may ensure the state's needs for confidence that the care and education of children are met, and families' opportunities for meaningful choice over the implementation of their educational strategies are equally enabled.

In Australia, the most compelling example of a distinct and balanced home education regulation system (a previous Tasmanian approach) reflects a co-production approach. The system was based on the first state-sponsored research about home education in Australia and developed in collaboration with home educators (Carlos, 2017; Jackson, 2017). In Tasmania, home education registration was undertaken by home educators, via the Tasmanian Home Education Advisory Council, which was also involved in

actively supporting the home education community. In more recent revisions of the state's education legislation, however, participation of the broader home-educating community was lessened, and that which did occur was achieved through intense lobbying (Carlos, 2017). The Tasmanian Home Education Advisory Council's role in the new system has been substantially reduced, moving from partner to advisor. The former regulatory system in Tasmania involved home educators as partners in the process of development and implementation, had the highest level of home educator registration in the country (Home Education Association, 2016; Jackson, 2017), and had no known incidents of serious child harm that could be identified as part of the review for this chapter. It isn't clear what these changes might mean for the motivational postures of Tasmanian home educators in the future.

CONCLUSION

Regulation is a method of governing that is deeply embedded in the modern state (Pierson, 2011), promising safety and control in the same movement. As increasing numbers of children are home educated, there is likely to be pressure on states to regulate the social practice of home education more comprehensively. There needs, though, to be greater attention to regulating more cooperatively. Regulations – those already in place and adjustments that might be made over time – must carefully balance the degree to which states intrude upon parents/guardians raising children in their care. Regulations must be fit for purpose. Where there is a disjunct between the intention and the outcome, these state 'intrusions' can be experienced negatively by home-educating parents. This is especially the case when the changes are imposed without consultation and, however unintended, cause harm.

Some discussions of home education regulation presume a conflict between parents and state over the control of, and responsibility for, children. Discussions imply the state wresting control back from parents who resist regulation at each point and seek the least possible level of state involvement, accepting only as much regulation as they are forced to endure. The case study above indicates that legislators and regulators presume home-educating parents have to be dragged through the regulatory process and will not be constructive contributors to the development or implementation of home education regulation. At the same time, regulators are experienced by home educators as having limited appreciation of parents commitments to ensuring the best outcomes for their children. As the case study above shows, families and children can experience significant negative consequences when such conflict becomes entrenched and regulation is imposed without consultation. Parents, the inquiry showed, hold a range of motivational postures, including resisting the system and disengaging.

Disengagement is risky for parents as they can be fined or prosecuted for not complying with regulation. If registration can provide children any level of safety, then parent/guardian disengagement is risky for them, also. And, if complying with regulation can provide any value in the area of creating positive social effects and avoiding negative effects, then disengagement is risky for public agencies.

Motivational postures can be modified by the degree to which the regulator attends to, and is willing to engage with, regulated groups and their experiences with the regulatory process (Braithwaite & Reinhart, 2013; Murphy, 2016). This chapter, therefore, recommends the co-production of regulations and home educator involvement in the registration process as a productive approach that ensures education that meets children's needs and provides a safe home-educating context. The former Tasmanian regulatory system showed that home educators and government can work constructively together to build an effec-

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tive, safe system acceptable to those subject to it. Cooperative regulation-building and implementation is a better model of practice for the 21st century.

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CONFLICT OF INTEREST STATEMENT

Both authors of this chapter are home educators who actively participated in the lobbying that led to the Home Schooling Inquiry that is used as the case study in this chapter. They are members of the Home Education Association and at the time the Inquiry took place were members of its Lobby Subcommittee. In this capacity, they participated in making submissions to the Inquiry, and the first author appeared as a witness.

The first author is, at the time of writing, a member of the NSW Home School Consultancy Group.

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