

**The Victorian Branch of the Australian Education Union's  
Response to the Discussion Paper on the  
Review of Education and Training Legislation**

**May, 2005**

The Australian Education Union has substantial reservations about the Victorian Government's initiative to review and refine legislation relating to education and training in this state. We recognise that improvements in the legislation now in force can be made, in terms of consistency and coherence, direction and relevance to the contemporary and near future situation in education and training. However the approach taken to this task in the *Discussion Paper* does not reflect the reality of the situation nor does it reflect the Government's responsibilities to or accountability for government schooling. Importantly, the timeline is contrary to the stated intention of enabling broad community discussion on the issues canvassed. It also leads to the perception that the outcome of the review is predetermined.

It is crucial that any intended changes should be governed by the recognition of a fundamental distinction which is not apparent in the paper.

**There is, and will almost certainly remain, a distinction between education and training in Victoria in general, and public education and training in Victoria. Regardless of the nature of legislation related to the former, distinctive and separate legislation will be required to govern the latter.**

On page 5 of the *Discussion Paper* it is claimed that 'In 2004, the Victorian education system educated ...' . There is no 'Victorian education system'. There is a set of conventions and arrangements which apply to education and training in Victoria some of which are legislated. For example, there is a convention that children will begin schooling when they are around five years of age, and that this year will be called the Preparatory year; and the arrangement that when they are older they will have access to a credential administered currently by the Victorian Curriculum and Assessment Authority. Some of these matters are enshrined in legislation, including the principles that education should be free, compulsory and secular, and that parents may choose to send their students to schools which are not part of the government system.

There **is** a 'system' of government schools defined as much as anything by the fact that they 'are required to operate under a range of operational directives issued by the Department' (*ibid.*: 11). This Government itself makes appropriate claims for its unique features.

In this challenging context [of current social and economic circumstance and demands], government schools have a unique role. They accept all students, cater for all needs, and serve all communities. Governments have a key responsibility for ensuring that government schools deliver an excellent education and achieve quality outcomes for all their students.

The Victorian Government believes that all school students are entitled to an excellent education and a genuine opportunity to succeed, irrespective of the school they attend, where they live or their home background. The delivery of an excellent education to all students across all areas of the state is the challenge that the Victorian government sets for our government school system (*Blueprint for Government Schools*, 2003: 7-8)

'Unique' means 'distinctive, having no like'. The reasons for this uniqueness are contained in this statement — **'They accept all students, cater for all needs, and serve all communities.'**

Presumably whether the sum of the principles, conventions and arrangements referred to above are to be enshrined in legislation, and to what degree, is the topic of this review; and the singular focus on the issue of choice is the *quid pro quo* for increasing the underlying degree of centralisation and government control.

If the Government is prepared to apply the three principles highlighted above — ‘they accept all students, cater for all needs, and serve all communities’ — to all Victorian schools and training institutions and require them ‘to operate under a range of operational directives issued by the Department’, and presumably to fund them accordingly, then the proposed legislation can be said to apply to a system of Victorian government education and training. Until that time, there **is** a unique government system which requires the primary focus and support of the Victorian Government and, as is clearly indicated in the current legislation, requires differing and distinctive legislation for its regulation.

This distinction can be seen clearly in the three basic existing principles of ‘free, compulsory and secular’. While compulsion to attend school through various ages may apply across the board to the population and those responsible for its regulation (but not directly to schools, their role is to anticipate and cater for the education of all young people of certain ages), public education can be distinguished by the fact that it is characteristically intended to be free and secular. The legislation must continue to state these three basic principles.

The AEU believes that any review of education and training legislation should incorporate the first recommendation of the Ministerial Working Party on Public Education *Public Education: the Next Generation* which called for a renewed commitment to public schooling incorporated into legislation.

“Recommendation 1: A clear commitment by government to public schooling

That the Government provide a formal commitment to public schooling in Victoria by:

- a) endorsing the values and principles that provide the foundations for the system of public schools in Victoria as outlined in Section 1 of this report, specifically:
  - the child is the centre of public schooling
  - public schooling is dedicated to the highest standards of achievement and excellence
  - public schooling guarantees universal education
  - public schooling promotes diversity, social cohesion and reconciliation
  - public schooling is a core institution of our democracy.
- b) amending the Education Act to incorporate these values and principles.”  
(*Public Education: the next Generation*, DE&T, 2000)

In addition any review must provide for the seamless transition from preschool through school and on to employment or further education. It is the AEU’s view that the provision of preschool as a critical part of the education continuum should be within the Department of Education and Training.

Following are our responses to the eight specific questions asked in the *Discussion Paper*. In consideration of these questions we also believe that reference should be made to the relevant material in the Report of Ministerial Working Party on Public Education, (*Public*

*Education: The next generation*) which comments on a number of these questions with the advantage of broad community consultation.

**1. Should the principle of a free instruction to a certain age or attainment level be affirmed as a guiding principle in new legislation?**

For the legislation related to government schooling, the answer must be yes.

One of the fundamental (and universal) characteristics of government schooling is that the government, on behalf of the general community and in recognition of the significance of education to the health and well-being of this community, pays. The distinctive characteristic of the two non-government sectors is that they charge fees to the users.

It may be argued that this distinction is now blurred in practice in that government schools charge some fees which are of varying scale and which may or may not be paid by parents, and that non-government schools are substantially supported by funding from state and Commonwealth governments.

However, this matter is a question of principle, and not one subject to the vagaries of contemporary circumstances. In this case, what was relevant 130 years ago is still deeply relevant. That principle is that education is valuable both for the community and for **all** the individuals of which it is made up. The Union has long been of the view, widely accepted across the community, that 'education is the cornerstone for our common future, prosperity and happiness. It is imperative that it should be of the highest quality, accessible and effective for all.' One way in which we recognise this value is enshrined in the fact that we limit the barrier of access via personal cost to the most minimal point possible and there should be no compulsory costs associated with core instruction.

Should some members of the community for reasons of religious belief, educational preference or their desire to otherwise distinguish their children from the broader community choose a differing type of schooling for their children, then that is a privilege for which they pay.

The new legislation should make this distinction explicit.

## **2. Should the secular nature of government school provision be affirmed as a guiding principle in new legislation?**

For the legislation related to government schooling, the answer must be yes. Again it is a distinguishing characteristic of this sector and form of schooling.

The separation of church and state is not a peripheral issue, an historical battle at the margins of relevance. Any contemporary account of the development of the principles of 'free, compulsory and secular' will make clear that the issue was to free schools of sectarian bickering and, while tolerant of the range of belief systems in place, to provide a space for the development of rational and open perspectives in young people characteristic of what we think of as education. It should never be open to sectarian interests of any sort, religious or otherwise, to commandeer parts or the whole of public education.

Arguments advanced about the existence of religious instruction/education in public schools are deeply trivial compared to the significance of this issue. Religious instruction/education is conducted on a comparatively small scale, and choices can readily be made to opt out. While recognising the difficulties that this may present for some schools, we believe that choices should be made rather to opt in. But to claim that this process traduces the principle of the secular nature of the government education system is ill-founded.

It might be noted that the discussion of this issue in the *Discussion Paper* (p. 7) refers largely to schools in the non-government sectors and out-of-hours use of government school property. Those educators can choose, as do the parents and students, to pursue this course of action. The principle governing education in public schools is that it must remain secular.

## **3. Should people's right to choose between school education providers, registered or recognised by the government, be established as a guiding principle in new legislation?**

That a Labor Government could advance this idea suggests that it is out of touch not just with the attitudes of the community as a whole but also with its own principles.

Why would a government pursue this course of action as 'a guiding principle'? To be held increasingly captive to demands of financial support from the non-government sectors? To give support to and increase the speed of the residualisation of the public sector? To suggest to communities in regional and rural parts of Victoria that current government provision is unsatisfactory and that they need to explore the creation of new non-government schools because at present they do not have choice?

In the Minister's foreword to the paper it is stated: 'In particular, we recognise that parents want a wide range of choice in the institutions in which they can enrol their children and students require choice in further education and training to realise their own ambitions.' This is repeated in the odd miscellany of items which appear under the description of the features of the current education and training environment (p.5).

Our own research indicates that this issue is a long way down the list of parental concerns, well below for example: 'The Government needs to maintain the principle that public education is free and available to all', and 'All students should be guaranteed entry to their local secondary school', and that in the government sector teachers should be professional

attentive and caring, that there should be smaller class sizes to allow more individual attention, and that the quality of buildings and facilities in government schools should be improved. (Essential Media Communications, 2004) These are concerns about **quality and access**, not choice, and these are concerns which matter. These are the issues where the government should be focusing its attention.

At the very beginning of the *Discussion Paper* it is stated, 'Today the education and training sector is characterised by ... greater competition between providers, both government and non-government' (p.3). If this is a fact already, why support this through legislation, except to pander to the minority, the 34%, who already choose to send their children, as legislation currently allows, to non-government schools, and to the very small and very vocal minority who see 'choice' as dominating all other values.

The AEU assumes that the Bracks Government shares its commitment to a public system of education and training which fosters collaborative effort between public education providers. During the seven years of the Kennett Government public education was subject to an officially sponsored culture of competition. Individual schools and colleges were encouraged to compete for market share amongst themselves, as well as with non-government providers, using the rationale that choice between institutions will lead to quality. This approach is ideological rather than based on any factual evidence. It led to failure and waste - for every winner there was a loser and scarce funds were diverted away from the core business of teaching and learning to publicity.

This is an inappropriate and ineffective means of promoting quality in a public education system. The state system was established to provide equitable access to the best possible education for all Victorian students. This purpose should inform the structure and culture of the system and be supported by legislation.

Public education should play to its strengths. One of these strengths is its scale and the fact that it can maintain a level of diversity of approach and responsiveness to local needs. Another is the collaborative advantage arising from shared needs and a common public framework within which to operate.

#### **4. Should education and training providers be required through legislation to operate and deliver a curriculum consistent with Australian democratic principles?**

The first step in providing 'a curriculum consistent with democratic principles' is to ensure that every provider enables democratic access to that curriculum, regardless of income, ethnicity, religion or gender. This would be a worthy principle to include in legislation. There is a sense that the Discussion Paper has adopted a very narrow definition of 'democracy' because it skirts around this issue.

The definition of a curriculum 'consistent with Australian democratic principles' contained in the Paper suggests that it includes 'tolerance, respect for the individual, freedom of speech and freedom of religious affiliation'.

In literal terms a 'curriculum' is a course of study; in conventional usage it refers to the formal learning program offered by a school or institution. 'Tolerance, respect for the individual, freedom of speech and freedom of religious affiliation' cannot be described as a

curriculum. Does the question relate to legislating for the nature of school climate, or behaviour within the school, or some other matter?

Experience of more closely legislating the actual curriculum in Margaret Thatcher's England and Wales provides no evidence of improved outcomes for students and a great deal of evidence of inflexibility and negative impact on school operations. If that is what is intended, the Union and its members would resist it strenuously.

If a legislated checklist for directing/assessing the nature and direction of school programs is required, the adoption of the National Goals for Schooling to which the Victorian Government is a party, which deal with matters such as those alluded to, should be considered. These Goals have been modified once already in the comparatively short period of their life and the prospect of this occurring at regular intervals is reasonably high. This problem could be resolved by having the legislation refer to them generically.

**5. Should the right of public access to information about provider performance be established as a guiding principle in new legislation?**

This appears to be a case of beginning with a solution to a problem which is only subsequently claimed. Apart from small voluble sections of the media, we have not been able to locate through our research or experience any significant demand from the community for public access to information about provider performance.

The legislation should be amended to ensure non-publication of any data that could lead to the development of league tables including AIM testing results as foreshadowed by then Minister Don Hayward when standardised population testing was first introduced. The main purpose of such information should be to improve student learning. Its broad publication has the potential to lead to simplistic judgements in isolation from the range of complex factors that impact on such "performance indicators".

Furthermore, there is an abundant literature on the negative impacts of the public listing of provider performance – or 'league tables'. Media use of data, gained either formally or informally, is used to unfairly criticise and undermine the government school system, particularly as performance data does not address the differences in student population in the different sectors and systems of schooling. An un-level playing field in terms of the resources available and the needs of the students in the different sectors of schooling, and the different schools within those sectors, is exacerbated by the publication of 'performance' data. Given the present resourcing differentials between government and independent schools, the publication of such data would be contrary to fundamental principles of social justice and democracy. It would certainly not lead to a 'fairer Victoria'.

If the Government wishes to increase the level of transparency in the education and training system, the AEU recommends that it consider the right of public access to information about the total funding available to each provider, as a substantial body of research has identified the crucial link between provider performance and levels of resourcing.

**6. Should the right of parent and student access to information about individual student achievement be established as a guiding principle in new legislation?**

Parent and student access to information should be consistent with the Freedom of Information Act 1982, the Information Privacy Act 2000 and the Health Records Act 2001.

## **7. Should a common and flexible regulation and quality assurance regime be established for all schools?**

A 'flexible regulation' regime appears to be a contradiction in terms. It is either regulatory or something different. The *Discussion Paper* appears to be striving very hard to make a potentially problematic and, even dangerous, idea palatable. We would welcome more information on what is under consideration before providing a definitive response.

As a general indication, we would generally support the process as a whole if it focused on matters exemplified under 'Inputs' and 'Outputs' on page 11 of the *Discussion Paper*, but would point out that the idea of regulating 'Outcomes' lacks credibility as far as it can be understood. Is the intention, for example, to de-register schools whose students' performance falls below national literacy benchmarks?

We note that information about the matters referred to under 'Inputs' and 'Outputs' are readily available for schools and training institutions in the government sector, and thus it is likely to have little impact on those organisations. It is nonetheless a far cry from the Government realising its obligations to, for example, provide a guarantee of minimum curriculum offerings.

In fact it is difficult to locate any broad interest in the quality of education in the proposals in the *Discussion Paper* at all. They seem to be primarily focused on the implementation of a particular form of managerialism.

## **8. Are there any existing responsibilities of statutory authorities which should be changed?**

This is a matter for a focused and expert review rather than comment in passing in a consultation paper.

## **9. Other Legislative Changes**

**The AEU recommends that the legislation governing the employment of Casual Relief Teachers in Government Schools and TAFE Institutes be amended in the following manner:**

The legislation should proscribe TAFE institutes and government schools from engaging teaching and allied staff on an independent or dependent contractor basis.

The legislation should ensure that all categories of teaching staff in government schools (ongoing, fixed-term and casual) are employed by the State as Crown employees and not as employees of a School Council, a labour hire agency or on an independent contractual basis.

Alternatively, the Minister should investigate the possibility of policy advice or legislative amendment which ensures that workers engaged as other than employees be deemed to be employees for the purpose/s of the insurance policies of TAFE institutes and government schools.

There should be a prohibition prescribed in legislation on the deduction from a worker's wage of any fee for the service supplied by a labour hire agency to a government school or TAFE institute. The cost of such services would therefore be born by the agency itself, or by the school or by the TAFE institute.