REPORT OF THE

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

IN RELATION TO THE

School Education Bill 1997

Presented by the Hon Barbara Scott MLC
(Deputy Chairman)

Report 9

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

7 November 1996

Membership

Hon Kim Chance MLC (Chairman)
Hon Barbara Scott MLC (Deputy Chairman)
Hon Dexter Davies MLC
Hon Helen Hodgson MLC
Hon Christine Sharp MLC (substitute member for the Hon Cheryl Davenport MLC)
Hon Barry House MLC (not participating in this report - see Appendix 2)
Hon Ljiljanna Ravlich MLC (participating non-member)

Staff

Warren Louden (Consultant)
Jason Agar (Committee Clerk)
Mia Betjeman (Legal Adviser - Appendix 3)

Terms of Reference

See Appendix 1

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School Education Bill 1997

Final Report

1 INTRODUCTION

1.1 On Wednesday, 19 August 1998 the School Education Bill ("Bill") was referred by the Legislative Council to the Standing Committee on Public Administration ("Committee"). The Committee was required to report to the House not later than 23 September 1998.[1]

1.2 The Bill was previously referred to the Committee on 30 June 1998 prior to prorogation of the first session of the Parliament. The Committee tabled an Interim Report in respect of that referral on 5 August 1998.[2]

1.3 The Interim Report noted "*At this stage issues of concern can be related to 56 clauses of the 240 clauses in the Bill.*"

1.4 The Committee noted its intention, if the Bill was referred to the Committee when Parliament resumed, to "*canvass primary stakeholders by seeking written submissions on whether the Bill, as passed by the Assembly, has satisfied their concerns with the Green Bill and, if not, to indicate their reasons.*"

1.5 The Committee also signified its intention, after considering the responses, to invite "*some or all of the stakeholders to appear before the Committee.*"

2 PROCEDURES OF THE COMMITTEE

2.1 As stated in the Interim Report, members of the Legislative Council were contacted on 6 July 1998 and asked to detail an "*outline of concerns they had with the Bill.*" Responses were received by the Committee from the Hon Derrick Tomlinson, Hon Helen Hodgson, Hon Christine Sharp and the Chairman, the Hon Kim Chance.

2.2 Following the new referral of the Bill on 19 August 1998 the Committee conducted public hearings with representatives from the Association of Independent Schools, Catholic Education Office, Education Department of Western Australia ("EDWA"),

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1 Hansard, 1998, Volume 2 (2nd session) pp 456 - 457.

2 Standing Committee on Public Administration, Report 7, "School Education Bill 1998: Interim Report", August 1998.

WA State School Teachers Union, WA Council of State School Organisations ("WACSSO") and Mr Ken Booth and Mr Wayne McGowan of the Department of Education Services. Mr Booth and Mr McGowan are members of the Education Act Review Project which is responsible for preparing the Bill. The areas of concern of these stakeholders were noted by the Committee.

2.3 The Committee held nine meetings in the period 26 August to 22 September 1998 in order to hear evidence from the above parties and to deliberate on the areas of concern.

2.4 One member, the Hon Barry House MLC, decided not to participate in the Committee's deliberations. Mr House's reasons for making this decision were clarified by him in a letter to the Chairman dated 17 September 1998 (see Appendix 2).

2.5 The Bill consisted of 240 clauses and submissions were received on about 60 of these prior to the Interim Report. Following the referral of the Bill to the Committee in August submissions were received in relation to a further 41 clauses.

2.6 In view of the large number of clauses submitted for amendment the Committee established principles under which the amendments could be considered. The following guiding principles and areas of concern emerged:

2.6.1 The importance of education - encompassing enrolment and attendance clauses;

2.6.2 Priority of enrolment for local area students;

2.6.3 Schools as safe and stable environments - encompassing issues such as school discipline, exclusion from schools, disruption by persons other than students and dissemination of information;

2.6.4 Parent and community involvement, home schooling, school councils, panels, appropriateness of educational programmes;

2.6.5 Affordability of education;

2.6.6 Non-government schools;

2.6.7 Penalties as a last resort; and

2.6.8 Miscellaneous matters.

2.7 Clauses which the Committee recommend be amended are identified in this report in the light of these principles.[3]

2.8 The amendments will be drafted by the Committee in consultation with Parliamentary Counsel and are to be tabled as a schedule to this report when the House resumes sittings on 13 October 1998.

2.9 The principles outlined in paragraph 2.6 above are not mutually exclusive. For ease of reference recommended amendments have been placed in the category which best conforms with their intention.[4]

PRINCIPLES AND AREAS OF CONCERN

3 THE IMPORTANCE OF EDUCATION

3.1 While the Committee has considered the objects and principles of the Bill, it has determined that they are primarily policy issues (rather than issues of public administration) and as such, are outside the scope of the Committee's terms of reference as outlined in the Legislative Council's Standing Orders. The Committee notes that decisions on matters of policy will be properly addressed by the Parliament.

3.2 It is the Committee's view that in order to meet community expectation and ensure an appropriate level of education for all, the following requirements must be met:

3.2.1 that all children of compulsory age attend school for at least 10 years;

3.2.2 that children should attend on a regular basis; and

3.2.3 that an appropriate educational programme is available.

3.3 While the Bill provides a number of measures designed to ensure a child, once enrolled, attends school there is no power for a school attendance officer to be involved in enrolling a child. The Committee recommends that this be effected by amendment of clause 36(1).

3.4 Clause 9 makes enrolment compulsory and uses fines as a way to enforce the provision, by creating an offence for non-compliance. The Committee recommends

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[3] References to clauses and page numbers in this report are to Bill Version No.47-2A as tabled in the Legislative Council.

[4] The text of any amendments cited in this report are indicative of the Committee's recommendations only. The Committee will provide a more detailed and comprehensively drafted set of amendments after consultation with Parliamentary Counsel, as discussed at paragraph 2.8 above.

that clause 9 be amended to ensure, as an alternative to a penalty being imposed by way of fine in the first instance, an appearance by the parent and child before a school attendance panel.

3.5 Clauses 39(2), (3) and (4) deal with membership of panels. After extensive discussion the Committee resolved that membership of panels should not be limited by specification in the regulations. The Committee recommends that no panel should have as a member, a person employed in the school or a parent of a child enrolled at the school. Other clauses where this recommended amendment will apply are clauses 87, 93 and panels formed under clause 234.

3.6 Clause 39(b) prevents the representation of parents at panel proceedings "*unless the panel otherwise determines on the ground that the process will not work effectively without this representation.*" The Committee endorses this provision but recommends an amendment to allow for persons appearing before a panel to be accompanied by, but not represented by, another person. The recommended amendment should also apply to all cases where a person is required to appear before a panel.

3.7 The Committee recommends that an amendment to clause 40(2)(b) be made to allow a panel to, for example "*give such advice and assistance as deemed necessary to the child, parents and school in order that the school may develop an appropriate educational programme for the child.*"[5] This emphasises the responsibility of the school in encouraging attendance.

3.8 The functions of school attendance panels are specified in clause 40(5) and are advisory in nature. The Committee recommends modification of clause 40(2)(b) to extend the advisory function. The Committee considers that these panels should have an appellate function in cases such as those applying under clauses 20 and 21 and will provide recommended amendments in this and similar clauses, for example clauses 82, 83 and 95.

3.9 The Committee also recommends amendments to clause 84 by re-wording:

3.9.1 the nature of the benefit or detriment likely to accrue or be suffered by the child; and

3.9.2 the nature of the benefit or detriment to be suffered or accrued to all other persons concerned.

These amendments are to ensure a balance between the rights of the child and the rights of the rest of the school community.

[5] Refer to footnote 4.

4 PRIORITY OF ENROLMENT FOR LOCAL STUDENTS

4.1 Consultation with principal stakeholders indicated that, although parents and students appreciated the opportunity to exercise choice by attending schools other than the local area school, there was concern that such choice could result in children not being able to enrol at their local school due to enrolment pressure from outside the local area.

4.2 Strong arguments for ensuring that children could attend their local school were made on the grounds of social cohesion, convenience and cost. A further view was expressed that the removal of boundaries would result in the residualisation of some schools.

4.3 The Committee agreed that it was reasonable to protect the right of children to attend their local school and recommends amendments to clause 60(1)(a) to apply to all government schools except those where the Minister has determined otherwise. The Committee also recommends amendments to clause 60(3), so that the Chief Executive Officer publishes the list of schools that are not local-intake schools, and consequential alterations to clause 4, page 5, lines 3-6.

4.4 Clause 77 deals with the enrolment of children below compulsory school age. The Committee considers that these children should be given the benefit of local-area priority. To clarify this situation the Committee recommends amendments to clause 77 by deleting clause 77 and substituting it with an amendment along the following lines[6]:

> "A child is entitled to be enrolled at a government school or an off-site pre-primary centre or local community kindergarten or a family centre for each year in which the child's pre-compulsory education period falls if:
>
> (a) there is available for the child at that school / or centre:
>
> (i) an appropriate educational programme; and
>
> (ii) classroom accommodation; and
>
> (b) the enrolment would conform with other criteria prescribed by the regulations for the purposes of this section."

4.5 The Committee could see no justification for treating children of compulsory and post-compulsory age differently and recommends amendments to combine clauses 78 and 80 to give the benefit of local-area priority while giving the entitlement to both groups to attend a school other than the local-intake school, subject to the availability:

4.5.1 of an appropriate educational programme; and

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[6] Refer to footnote 4.

4.5.2 classroom accommodation.

4.6 As a result of the amendments indicated in paragraph 4.5 the Committee recommends deletion of:

4.6.1 clause 80; and

4.6.2 the reference in clause 82 (2) to clause 80.

5 SCHOOLS AS SAFE AND STABLE ENVIRONMENTS

5.1 For education to proceed effectively students require a safe and stable environment. In the Committee's view this requires that both the internal processes of the school and the external environment are properly controlled.

5.2 Responsibility for the management of the school rests with the principal under clauses 63(1)(b) and (1)(c). This responsibility is shared with teachers who, under clause 64(1)(e), are required to supervise students and maintain discipline. These functions must be in compliance with clause 229.

5.3 It is inevitable that in some schools there will be disciplinary problems. The principal in such cases has the short term power of suspension to allow a "cooling off period."

5.4 To deal with more protracted disruptive behaviour, school discipline panels may be convened. The Committee recommends amendments to clause 93(2)(b) to bring that clause into line with recommended amendments to the school attendance panel provisions, which are outlined in parts 3.5, 3.6 and 3.8 of this report.

5.5 Clause 93(5) deals with representation at school discipline advisory panels. The Committee recommends amendments in the way detailed in paragraph 5.4.

5.6 Since the purpose of discipline advisory panels is to bring the expectations of schools, parents and students closer together, it is essential that the panels need to be able to advise and seek commitments from all parties including the school. The Committee recommends amendments to clause 93 to make this power explicit.

5.7 Clause 95(1) gives the principal of a government school the power to exclude a student of post-compulsory age from attendance. Under clause 96(1) a student who is excluded may seek a review by the Chief Executive Officer. This review is limited to the procedures used in making the decision. The Committee sees no reason why similar rules should not apply to children of compulsory and post-compulsory age. The Committee recommends that school disciplinary panel procedures should apply to post-compulsory students.

5.8 Control of the school environment requires control of school premises. The power to do this lies in clause 114 pursuant to which regulations can be made to deal with

the many circumstances which may occur. The power to impose fines of up to $2000 for breaches of the regulations gives the school reasonable authority and the Committee does not recommend any amendment to clause 114.

5.9 Clause 115 gives an authorised person power to order a person, not being a student, to leave the school premises. Failure to observe this instruction allows the detaining of the person and their delivery to a police officer. The Committee is satisfied that the $5,000 penalty provided for this offence is appropriate and does not recommend any amendment to this clause.

5.10 Some concern was expressed to the Committee over the involvement of school staff in these circumstances but no amendment was proposed in any submission and accordingly the Committee has not considered this issue.

6 PARENT AND COMMUNITY INVOLVEMENT IN SCHOOLS

6.1 One of the objects of this Bill is to acknowledge the importance of the involvement and participation of a child's parents in the child's education (clause 3(d)).

6.2 The Bill's attention to the development of school councils and parent and community involvement through advisory panels is further evidence that greater involvement by parents and community in what happens in schools is welcomed.

6.3 Home Schooling

6.4 The most direct way in which a parent may be involved in the education of his or her child is through home schooling. The Committee recommends amendments to two clauses and the establishment of a new clause in relation to this matter. These changes would involve transferring administrative responsibility to the Department of Education Services, in line with non-government schools. The Committee recognises that home schooling is a qualified parental right and recommends that the requirement to apply for registration is altered to that of notification.

6.5 The Committee notes that since home educators are not part of the government school system, then it would be appropriate that the Chief Executive Officer should be the officer referred to in Section 145 (Part IV Non-government schools). The Committee therefore recommends a new clause headed "References to Chief Executive officer" which is to note that "References in this Division to the chief executive officer are to the chief executive officer referred to in section 145".

6.6 Clause 47 requires that a parent of a child of compulsory school age who wishes to be registered as the child's home educator is "to make an application for registration". Clause 3(b) allows "education to be given.....at home". Because 3(b) gives an entitlement the Committee believes that notification of the intention to educate the child at home, rather than application for registration, is appropriate.

6.7 The Committee recommends that the heading of clause 47 be deleted and replaced with "Parent to notify intention to educate child at home" and that the following amendments be made to the clauses 47 and 48[7]:

6.7.1 page 36, line 15 by deleting "make an application for registration" and insert "be registered".

6.7.2 page 36, line 16 by deleting "apply" and insert "notify";

6.7.3 page 37, line 12 by deleting "to make an application for registration" and insert "be registered" ;.

6.7.4 page 37, line 21 by deleting "a completed application" and inserting "notification";

6.8 Clause 73 deals with educational programs for children with a disability. The Committee considered a proposed amendment which required that an individual educational programme be prepared for each child with a disability (as defined in the Bill) who was enrolled. The Committee was satisfied that clause 73 (1) in specifying that "*the particular requirements of the child must be met*" implied this and notes that the clause notes indicate that this is the intention. Accordingly the Committee does not recommend any amendment to this clause.

6.9 Committee members expressed concern that children who did not fall within the definition of "disability" (as outlined in the Bill), but had significant learning difficulties which fell outside the scope of the definition, were not provided for.

6.10 School councils were discussed by the Committee at some length. A question was raised as to whether clause 120(1) which specifies that "*A government school is to have a council...*" meant that a community kindergarten could not have a governing body. The fact that such centres are incorporated bodies was considered to guarantee their independence.

6.11 The Committee recommends that clause 122 (page 87) be amended as follows[8]:

6.11.1 Insert after "*school*" at line 22 "*including persons whose details have been provided under Section 16(1)(b)(ii)(II).*"

6.11.2 Page 87, lines 13-15 be deleted and substituted with:

"*(4) The majority of members of a council must be persons referred to in subsection (1)(a).*"

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7 Refer to footnote 4.

8 Refer to footnote 4.

6.11.3 Subclause (4) be deleted and after line 12 the following be inserted :
"*(4) In this section "members of the community" means any person living, working or engaged in community affairs or other appropriately qualified persons.*"

6.12 The Committee could not reach a unanimous decision in regard to clause 124(2a). The Committee notes the view of the State School Teachers Union, that Councils ought not to be involved in local staff selection, which was supported by certain Members of the Committee. However, other Members of the Committee expressed a wish for Councils to have an input in the selection process. The Committee has determined that 124(2a) is a matter of policy and should only be considered by the Parliament.

6.13 A further view was expressed that the additional powers which could be given to councils under clauses 124 and 125 were unnecessary and could divert the school's attention from its primary purpose of educating students.

6.14 In view of its inability to reach consensus on the issues raised in paragraphs 6.12 and 6.13, and also because the Committee considered them to be policy issues, the Committee does not make any recommendation about amendments relating to these clauses.

7 AFFORDABILITY OF EDUCATION

7.1 This issue involves consideration of clauses 97-100, 102-103. A number of proposed amendments were received concerning charges for the provision of materials, services and fees for instruction in government schools. Most submissions sought to define what materials and services should be provided and opposed the requirement for any fee for instruction.

7.2 In its deliberations the Committee identified two fundamental positions arising from the proposed amendments which needed to be considered. The first were those designed to ensure equity for all children by having all but personal materials provided. Against this was the view that such an approach was unnecessarily restrictive and could limit choice and quality in government schools.

7.3 The Committee has considered, but not adopted, a compromise position by re-defining the school grant so that parents were not charged for the costs that are related to achievement of the key learning outcomes as defined by the Curriculum Council.

7.4 After consideration of the matter the Committee determined that this was a policy matter and so makes no recommendation with respect to clause 97.

7.5 The Committee recommends amending clause 99 by limiting the title to overseas students and deleting "or" in line 16 and sub-clause (b).[9]

7.6 The Committee recommends that clause 100 be amended to the effect that matters included in the regulations include remission, waiver or reduction; and provision for arrangements for payments by instalments.

7.7 The Committee recommends that clause 102 be amended to include provision to require that, before initiating legal proceedings, the chief executive officer be required to:

7.7.1 inquire into the reasons for failure of the person to make payment;

7.7.2 ensure that all reasonable practical steps have been taken to recover payment; and

7.7.3 take into account the circumstances of a person and their capacity to make payment.

7.8 The Committee considers that clause 103 is a policy issue and therefore makes no recommendation on this clause.

8 NON-GOVERNMENT SCHOOLS

8.1 The Committee recommends two amendments in respect of non-government schools:

8.1.1 Clause 170 - this clause relates to "Inspection without notice". After discussion with representatives of non-government schools, the Committee recommends that an amendment be made which allows a minimum of one hour's notice to be given to the Chairman of the School Board, the Principal or his delegate.

8.1.2 Clause 178 - As it presently exists, under this clause these schools only need to furnish a report as to application of moneys allocated to the school by the Minister at his request. The Committee recommends that amendment be made to require such report to be provided annually. This matter was discussed with non-government school representatives who indicated that so long as the form of the report could be similar to that provided annually to the Australian Government this amendment would be acceptable to them.

[9] Refer to footnote 4.

9 PENALTIES AS A LAST RESORT

9.1 During the Committee's consultation and deliberation, the members noted that there was considerable debate about the level of penalties and spent some time considering the issue of penalties within the Bill. The Committee received legal advice on the need for fine and penalty provisions in the Bill and was satisfied that those provisions were necessary to establish an offence. A copy of the Committee's consideration of this issue is attached as Appendix 3.

9.2 The Committee took the view that so far as students were concerned the imposition of financial penalties was to be regarded as a last resort.

9.3 The Committee recommends that clause 9 be amended by deleting the $5000 fine while retaining the $25 per day penalty once non-enrolment has been before a panel. The Hon Dexter Davies opposed the Committee's decision to remove the $5000 fine.

9.4 Clause 36(3) provides for a fine to be payable if a child fails to provide information as requested by a school attendance officer. The Committee recommends amendments to the clause to require attendance of the child before a school attendance panel and failing that, referral of the matter under the provisions of the Young Offenders Act 1994.

9.5 Clause 37 provides for a fine for persons resisting, hindering or obstructing a school attendance officer. The Committee recommends amendments to that clause:

9.5.1 to separate those who have offended under the clause into students and non-students;

9.5.2 directing students to a school attendance panel with failure to appear resulting in a referral to the Juvenile Justice Team in accordance with the provisions of the *Young Offenders Act 1994*. The Committee notes that this is the same as the provisions outlined in the Bill in accordance with section 41(2); and.

9.5.3 subjecting non-students to the penalty in its present form.

9.6 The Committee recommends that clause 38(1) be amended by the deleting the $1000 fine while retaining the $25 per day penalty once non-enrolment has been identified by a panel. The Hon Dexter Davies opposed the Committee's decision to remove the $1000 fine.

10 MISCELLANEOUS MATTERS

10.1 Clause 14 - Authorised persons

10.2 The Bill makes provision for the appointment of authorised persons who act as school attendance officers. Under the provisions of the Bill, a school attendance officer must show his/her certificate of authority if asked to do so.

10.3 The Committee considers it desirable that authorised officers be provided with an easily recognisable symbol of authority. The Committee therefore recommends an amendment to require that the symbol of authority be made clearly visible by the authorised person at all times in which that person is exercising the authority.

10.4 Clause 115 empowers an authorised person to take action against a person who is not a student and is disrupting good order in the school. Such action may culminate in the need to detain a person "*until the person can be delivered to a police officer*" and power is given for the "*use of the help of other persons as is necessary for that purpose*." Authorised person in this context is defined as the principal of the school or others authorised by the Chief Executive Officer.

10.5 It was accepted that there was a need for this power and the Committee recommends that no amendment be made.

10.6 Clause 216 - Review by Minister or Delegate

10.7 The Committee recognises the desire for a separate and independent office of review in relation to the management and procedures of EDWA. However the Committee notes that it is beyond the power of the Legislative Council (and its Standing Committees) to amend the Bill to include an "Education Ombudsman" or an independent review officer, as these amendments would require an appropriation of funds which the Legislative Council could not initiate.

10.8 The Committee notes that complaints regarding the administration of EDWA can be directed to the Parliamentary Commissioner for Administrative Investigations, who, during 1997-1998, received 21 complaints (which included 25 allegations) concerning EDWA.

10.9 The Committee recommends that clause 216 be amended to note that the Office of the Parliamentary Commissioner for Administrative Investigations is the appropriate place for complainants to take their grievances concerning EDWA if they require a totally independent review. On receiving complaints the Parliamentary Commissioner may undertake either a merit or procedural review of the decision made by EDWA.

10.10 The Committee recognises that the terms of the Parliamentary Commissioner Act 1971 severely limits the Parliamentary Commissioner in respect of his investigatory powers. Section 14(3) of that Act states: "*This section does not authorise or require*

the Commissioner to investigate under this Act any decision made by Cabinet or by a Minister of the Crown or question the merits of any such decision".

10.11 Accordingly the Committee recommends that clause 216 be amended in order to establish a complaints panel (which would not be regarded as a delegate of the Minister as this would exclude the Parliamentary Commissioner) within EDWA which would receive complaints and make recommendations to the Minister or CEO on how to deal with them. Although the Parliamentary Commissioner would not inquire into the Minister's final decision, he could inquire (either by merit or procedural review) into any recommendations made to the Minister by the CEO or the recommended complaints panel.

11 AMENDMENTS NOT CONSIDERED BY THE COMMITTEE

11.1 In addition to excluding amendments to clauses which were considered to be of a policy nature, other proposed amendments could not be considered because of time constraints.

11.2 Among these were school closure (clause 58), sponsorship and advertising (clauses 211-214), amended powers for WA Council of State School organisations and power to exempt (clause 215) which it was suggested in a proposed amendment might lead to the creation of charter schools.

HON BARBARA SCOTT MLC
DEPUTY CHAIRMAN

25 September 1998

APPENDIX 1

Terms of Reference for the Standing Committee on Public Administration

Schedule 1 of the Standing Orders establishes the Standing Committee on Public Administration. The Terms of Reference for the Standing Committee are:

"1. A Standing Committee on Public Administration is established.

2. The Committee consists of 6 members.

3. The functions of the Committee are:

(1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;

(2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and

(3) except as provided in Standing Order 339(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.

4. In this order:

"Agency" means-

(a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;

(b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include:

(c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;

(d) a court of law or a court of record, or a judge or other member of either court;

(e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;

(f) a police officer or other person in the course of exercising a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;

(g) a local government within the meaning of the Local Government Act 1995;"

APPENDIX 2

Barry House

MEMBER FOR THE SOUTH WEST REGION

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Hon. Kim Chance MLC
Chairman
Standing Committee on Public Administration
Parliament House
PERTH WA 6000

Dear Kim,

Re: **School Education Bill**

I write to notify you of my inability to play a significant role in the Public Administration Committee's consideration of the School Education Bill and request to disassociate myself from its findings.

My reasons are as follows:

1. As you are aware, I am also a Member of the Select Committee on Native Title. This Committee has worked hard over many months and is now in a very critical stage of its deliberations. Due to report to the Legislative Council soon, the Native Title Committee has recently met frequently to consider its final Report. Many of these meetings have been at the same time that the Public Administration Committee has met for hearings, or to consider the School Education Bill.

2 The Public Administration Committee has met far more frequently than normal for consideration of the School Education Bill. While the normal meeting times of the Committee, 1.30 p.m.-3.30 p.m. on Wednesday of Sitting days, has presented no problems, other meeting times and, particularly all-day meetings on Mondays and Fridays, have clashed with pre-arranged Parliamentary and Electoral commitments. This is particularly difficult for a Member of a Country Electorate, such as myself, who lives and locates his Electorate Office in the country.

3. The Federal Election campaign has also intervened and taken up a lot of my time, as I'm sure it has yours and all other Members of Parliament. This of course, could not be foreseen at the time of the referral of this Bill by the Legislative Council, but is another factor which must be taken into account.

.../2.

4. All Parliamentary Members wear many different "hats" and face a difficult time allocating their time and energy to do justice to all of their responsibilities. I consider the commitment sought from the Members of the Public Administration Committee on the School Education Bill abnormal and excessive in the last few weeks. It required them to almost entirely devote their time to this exercise to produce any meaningful result. I for one, was not in a position to devote this time, due to other responsibilities.

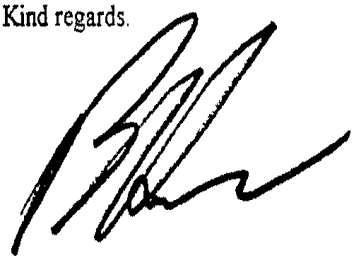
As I alluded to during the referral debate in the Legislative Council, I was doubtful that the Standing Committee on Public Administration would be able to do any sensible justice to the School Education Bill, given the extensive consultation which had preceded Parliamentary debate on this Bill and the "motherhood" nature of the issues. Everyone has an involvement and interest in education and it is difficult to envisage any curtailment of debate during the Committee stages in the House as a result of the Standing Committee's Report.

Nevertheless, I acknowledge the constructive debate, good intentions and diligent efforts of the Members of the Standing Committee considering the School Education Bill, but do not feel I can fully associate with its findings. I simply have not had the time to devote to the work required for the reasons outlined above and it would be dishonest of me to allow my name to be on the final Report which is presented to the Legislative Council.

According to the new Legislative Council Standing Orders, I offered my position as a Member of the Standing Committee on Public Administration to a substitute from the Coalition ranks for consideration of the School Education Bill, but there were no volunteers - obviously other Members are also fully committed.

Therefore, with no intention to decry the hard work and fruitful discussion on the School Education Bill within the Standing Committee, I regrettably cannot endorse its findings.

Kind regards.



Hon. Barry House MLC
MEMBER FOR SOUTH WEST REGION

17 September 1998.

APPENDIX 3

School Education Bill Inquiry: Penalties and Fines

The Public Consultation report prepared in respect of the Green Bill notes that a large number of the submissions expressed alarm at the number and size of monetary penalties in the Green Bill. There was the view that the legislation should:

* focus on a positive approach to dealing with non compliance issues;
* emphasise that the penalties are maximums in each case;
* minimise the number of fines; and
* reduce the amount of the fines.

During the Committee's consultation and deliberation, the members noted that there was still considerable debate about the level of penalties. Accordingly the Committee spent some time considering the issues of penalties within the Bill including the following:

1. Why penalties are necessary.
2. Whether the prescribed penalties are fixed or maximum.
3. Whether penalties in the Bill could be better dealt with under alternate legislation.
4. Penalties as a last resort.

1 Why penalties are necessary

1.1 The intent of the Bill is for compulsory education. and that is the policy with which the Committee must work. It cannot enquire into the policy.

1.2 In order to complement the compulsory education requirement it is necessary to have compulsion at law by creating an offence.

1.3 If no offence was created and there were only "administrative mechanisms" in place to promote attendance then there would be no legal means to enforce compliance with the Bill's requirements. However the existence of an offence does not preclude the use of administrative mechanisms to promote attendance.

1.4 Provisions such as those contained in clauses 9(2), 13 (3), 15, 35, 36(3), 37 and 38 of the School Education Bill are known as "***penalty provisions***".

Penalty provisions are the statutory provisions that enable and prescribe the powers of a court to impose punishment for an offence.

1.5 Without a penalty provision, there would be no compulsion at law on parents or children to comply with the requirements of the Bill by, for example, participating in intervention strategies which may be provided via School Attendance Panels or by schools directly if they have successful alternative programmes or truancy intervention strategies. In other words strategies can only work if there is appropriate judicial force to support it.

1.6 To create an offence a penalty must be specified. The specification of a penalty is necessary as it triggers section 72 of the *Interpretation Act 1984.* That section provides that where a penalty is specified at the foot of a section of an Act then that specification indicates that a contravention of the section "*is an offence*".

In other words the absence of a penalty means that there will be no compulsion at law as there would be no offence.

1.7 Penalties are usually stated in terms of fines or periods of detention. However the State's laws give discretion for the magistrate to take into account the capacity of the offender to pay as well as a range of other sentencing options. This is further discussed in relation to issue 3.

1.8 The position was succinctly stated to the Committee by Mr Ken Booth:

"*The policy position to check at the start is whether we still require compulsory education in Western Australia. The instruction we worked on was that compulsory education is still necessary. The unfortunate side effect of any compulsion at law, as I understand it, is that compulsion may not be complied with. In our case, we recognised that in the main the responsibility would need to be with parents to ensure that children attend schools at times required; however, in some cases children take it in their own mind - certainly during the young adolescent period - to control their own attendance patterns. It would not be enough just to apply a penalty to parents with none applying to children. We were conscious also that a number of inquiries have been conducted into children and the law, the most significant of which was published by the Australian Law Reform Commission at the time our Bill was put out last year: This was titled "Seen and Heard: Children in the Legal System." Generally, this states that the use of legal processes with children must be extremely carefully managed*

...It was our understanding - and this was the source of considerable discussion with parliamentary counsel - that if one wants to have an offence, one must apply some sort of penalty. Only two options exist in Western Australian law; that is, to apply a financial penalty amounting to a fine, or to apply some period of detention. We opted for the fine. However, as we have stressed throughout our public consultation, the notion of applying a fine to children in this Bill must be the last resort after a number of intervention strategies have been applied.

Considerable attention was given to intervention strategies in the drafting of the Green Bill. If we link the compulsion and intervention, an avenue was needed to the Western Australian legal system to allow a Children's Court magistrate to deal with a child if all the intervention strategies did not work. The intervention strategies are considerably different from anything in the 1928 Act, which merely talked about chronic absenteeism or truancy for which a child could be made a ward of the State. The 1928 legislation effectively meant that a child could be placed in the some form of detention in a state welfare institution. That is not the case in dealing with minors in today's environment.

Given the great growth in intervention strategies observed in government schools over the last 20 years at least, with all sorts of alternatives available to being in the classroom environment, particularly in high school, we thought it was important to use an external review panel - in this case, the school attendance panel. External people can be used to examine why the child is absent from school. Providing advice to the school and parents is a critical step in saying that before one could consider legal processes, intervention had to occur. It is only "persistent

absenteeism" - the phraseology in the Bill -which will lead to a child being in the legal processes at all. I stress that we use the term "absenteeism" to describe any unauthorised absenteeism. However, persistent absenteeism would take a child into the legal processes."[10]

2 Whether the prescribed penalties are fixed or maximum

2.1 Rules of statutory construction provide that penalty provisions are to be strictly construed. This results in the interpretation of penalties as:

- a maximum penalty with a discretion to impose less than the maximum; and
- a maximum penalty rather than a mandatory penalty.

2.2 In Western Australia the *Interpretation Act 1984* includes provisions to the effect that:

- "*Where in a written law a penalty is specified in respect of an offence, that penalty is the maximum penalty that may be imposed for that offence*" (s.70); and
- a penalty "*at the foot of a section . . . or . . . subsection*" is "*punishable on conviction by a penalty not exceeding that so specified*" (s 72).

2.3 Furthermore the *Sentencing Act 1995* also provides that:

"*If the statutory penalty for an offence is a fine of a particular amount or a particular term of imprisonment, then that penalty is the maximum penalty that may be imposed for that offence and, unless the statutory penalty —*

(a) is a mandatory penalty; or

(b) includes a minimum penalty,

a lesser penalty of the same kind may be imposed.": s. 9(2).

2.4 These provisions in the *Interpretation Act 1984* and the *Sentencing Act 1995* make it quite clear that the penalty is the maximum that may be imposed rather than a mandatory penalty "*unless the contrary is expressly provided*". Clear unequivocal words are required to rebut this statutory presumption. There are no such words in the Bill.

2.5 The presumption that a penalty is the maximum also applies to provisions delegating penalty powers, such as regulations, rules and by laws: *Interpretation Act 1984*, s 72.

2.6 The Committee considers that there is no need, indeed that it would be superfluous and inelegant, to repeat the interpretation of the penalty provision after each and every relevant section in the Bill.

2.7 Further the Committee does not want a situation to occur whereby the inclusion of interpretative provisions in the Bill could preclude the operation of the *Interpretation Act 1984* or the *Sentencing Act 1995* or conflict with any subsequent amendments to those Acts, particularly as those Acts are the principal tools for statutory interpretation and sentencing in the State.

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[10] *Evidence*, Mr Ken Booth, Director Education Act Review, 31 August 1998.

3 Whether penalties in the SEB could be better dealt with under alternate legislation e.g Young Offenders Act.

Restating the question: **Why not specifically create an offence in the Bill and leave the imposition of penalties to other statutes?**

3.1 It is necessary for a penalty to be stated in the Bill itself as:

- by virtue of s.72 of the *Interpretation Act 1984*, an offence is created and legal compliance with the Bill's requirements can be enforced. In other words the statement of a penalty is the "trigger" for the creation of an offence and the availability of legal proceedings and enforcement.

- the penalty acts as a "signpost" to the seriousness of an offence when it is considered by the courts: see s 6(2)(a) *Sentencing Act 1995*.

- in an indirect manner the specification of a penalty limits the range of sentencing options which a court may impose: section 39(2) of the *Sentencing Act 1995*, which contains sentencing options, states "*Subject to section 41 - 45..*".

  By way of illustration, please refer to the *Sentencing Act 1995* extracts at the end of this appendix:

  - If the prescribed penalty is only a fine then the court may only look at sentencing options under 39(2) (a), (b) and (c): s 44 *Sentencing Act 1995*;
  - If the prescribed penalty is a fine or imprisonment (for example s.35 of the Bill) the court may look to any of the sentencing options under s 39(2): s43 *Sentencing Act 1995*.

  Although there are numerous criteria to be addressed when courts exercise sentencing discretions the presence of a penalty in the Bill expressly limits that discretion at the outset.

- persons having to administer and/or comply with the requirements of the Bill are alerted to the fact that non compliance is an offence and that there are sanctions for an offence. On a practical note if there was no signpost to a sanction for an offence in the Act a persistent offender may ask "*So what if I don't comply?*".

- some provisions may not be an offence. The expression of a penalty makes it clear to the reader what is and what is not an offence.

3.2 The penalty provisions in the Bill do not preclude the exercise of:

- "administrative options" that may come into being from time to time and which may be required by School Attendance Panels; or
- the exercise of other sentencing options.

3.3 It is important to reinforce the fact that it is the courts, not the administrators of the Bill, who have the capacity to enforce the penalties and even then only after the court

has actually found that an offence has been committed. In the case of truancy, court proceedings can only be taken once the intervention strategies set out in the Bill have been exhausted, although referral to Juvenile Justice Teams are not precluded: clause 41 *School Education Bill*.

3.4 It is usual and standard for the penalty provision to prescribe the punishment in terms of imprisonment and fines, with other sentencing options such as probation orders and community service dealt with generally in a separate enactment.

3.5 The courts in all Australian jurisdictions have at their disposal a range of non-custodial sentencing options which are found in various Commonwealth and state statutes and also in the common law. In some jurisdictions these penalties are contained in single sentencing statutes, while in others, the sentencing courts may have recourse to a number of different sentencing sources. These include the Act which created the offence with which an offender has been convicted, Acts containing general punishment provisions and, in certain limited circumstances, the common law.

3.6 In Western Australia these sentencing options are dealt with in the *Young Offenders Act 1994* and the *Sentencing Act 1995.* Parts of these Acts are extracted at the end of this appendix. It is important to note that judicial discretion must be exercised in light of many criteria including, without limitation, the cultural background of the young offender: s. 46(2)(c) *Young Offenders Act 1994.*

3.7 Further under the *Young Offenders Act 1994* a child's case need not reach the Children's Court as it enables offences to be dealt with by means of a caution or be referred to a Juvenile Justice Team.

3.8 The *Sentencing Act 1995* provides a range of sentencing options for adults. An extract of the Act is attached at the end of this appendix for ease of reference.

3.9 These Acts apply as a matter of course to any statute that creates an offence. For the options to apply the statute itself, in this case the *School Education Bill,* must create an offence.

3.10 There is no need to specifically refer to these statutes in each and every Act or indeed each and every section of an Act which creates an offence. The Committee would not want a situation to occur whereby the inclusion of sentencing options in the Bill itself could be taken as excluding the operation of the *Young Offenders Act 1995,* or the *Sentencing Act 1994* or conflict with any subsequent amendments to those Acts, particularly as they are the principal tools for imposing sanctions for offences and the standard by which courts exercise their discretion in relation.

3.11 As stated by Ken Booth to the Committee: "*If a case goes to the Children's Court, as would be the case with this matter, we have flagged by way of footnote - again, this was a rather unusual feature in the Bill - that provisions of the Young Offenders Act in Western Australia would apply. Therefore, a magistrate would be required to look at all sorts of alternatives rather than imposing all the penalty as stated*."[11]

[11] *Evidence,* Mr Ken Booth, Director Education Act Review, 31 August 1998.

Further: "*... there is an important misconception that I picked up in the hearings last week. At clause 38 we made reference to the Young Offenders Act and the Sentencing Act and the fact that those are moderators to be applied when sentencing is used by the courts. Those apply equally to any penalty in the Bill; it is just that we have not put the footnote after each of those other places but could have done so. Our reason for doing it at clause 38 is that those were the high profile public discussion points. However, we stress in all the cases where penalties are applied, they are at the discretion of the magistrates and that the levels in the Bill must be commensurate with what we see as the most extreme form of the offence behaviour. It is the judgment given to the magistrates, rather than in the Bill, on which we need to strike a balance*."[12]

3.12 The goals of sentencing are: protection of the public, retribution, denunciation, deterrence, rehabilitation and restoration. These operate as guides to the appropriate sentence and are matters which the courts take into account in the exercise of their discretion. There have been changing trends in the popularity of individual theories of punishment which are reflected in academic literature, criminal justice policy and in the decisions of the courts. Trends will continue to change. The Committee considers that it would not be a useful exercise of the Committee's function to seek to impose a conclusion on trends and policies and philosophies about appropriate sanctions. Conclusions can be inflexible.

4 Penalties being applied as a last resort - should this be expressed by an overriding clause or as a specific requirement in each case where penalties apply?

4.1 It is important to remember that the penalties under the Bill may only be imposed by a court of law upon conviction.

4.2 There are two issues here:

- Legal proceedings (and therefore imposition of penalties) as a last resort after "administrative intervention strategies" have been applied; and
- Application of fines as a penalty as a last resort when the courts exercise their sentencing discretion.

Legal proceedings (and therefore imposition of penalties) as a last resort after "administrative mechanism have been applied:

4.3 As stated it is important to remember that the penalties under the Bill may only be imposed by a court of law upon conviction.

4.4 The Bill in some cases makes it clear that referral of a case to court is a last resort. For example the truancy provisions in clauses 38(1) and 38(2).

Under clauses 41 and 42 of the Bill it is clear that no case of truancy can be referred to court unless a School Attendance Panel or the CEO provides a certificate to declare that all reasonable steps have been taken to secure compliance with the attendance requirements and further, that breaches have still occurred.

[12] *Evidence*, Mr Ken Booth, Director Education Act Review, 2 September 1998.

That clause creates a "moratorium" on legal proceedings to enforce the offence and therefore the imposition of a sanction. During that moratorium there is an avenue for "administrative intervention" techniques and programmes to be applied. Recourse may also be had to Juvenile Justice teams: clause 41(2).

4.5 Other clauses of the Bill do not presently create prerequisites prior to the commencement of legal proceedings. For example clause 9, 13, 15, 35, 36 and 37.

4.6 In respect of the issue as to whether or not certain administrative avenues should be pursued prior to legal proceedings being commenced (and therefore the imposition of penalties) the Committee has examined those clauses in which an offence is created and determined whether or not:

- the principal requirement should attract compulsion at law. For example, in light of the Bill's policy of compulsory education the enrolment of children and the ability to enquire about children may be crucial (eg. Clause 9 and 13); and

- whether if compulsion at law is required then prior to the commencement of legal proceedings some administrative intervention in those circumstances would be appropriate.

4.7 The Committee has considered, in each case of non compliance, what, if any, "administrative steps" are required, prior to determining whether one overriding clause will satisfy all concerns. The Committee notes that the danger of an overriding clause is that it may have the unintended effect of requiring intervention for those offences for which intervention may not be appropriate eg: clause 35 - posing as a School Attendance Officer. Accordingly the Committee has considered each penalty provision and the steps it considers necessary prior to legal proceedings being commenced on an individual basis.

Fines as a last resort when the courts exercise their sentencing discretion:

4.8 It should be remembered that even if fines are not expressly imposed by the Bill that the courts still have power to fine an offender: *Sentencing Act 1995*, s 39(2)(c).

4.9 The amount of any fine imposed by the court must constitute an appropriate punishment, balancing the need to punish the offender, and the offender's capacity to pay. Thus, the amount and method of payment of the fine will need to take into account, as far as practicable, the financial resources and income of the offender and the nature of the burden that its payment will impose.

4.10 Most jurisdictions now offer alternatives to imprisonment for fine default, such as the use of community service as a method of working off a fine. The note at the end of clauses 38 (1) and 38 (2) of the Bill, for example, provides a reminder to the reader that the imposition of a financial penalty is but one response from a range enabled by the *Sentencing Act 1995* and the *Young Offenders Act 1994*.

4.11 This issue raises the question of whether the Bill itself should provide some guidance on the way in which the sentencing discretion should be exercised. Traditionally the legislature has provided little other than a penalty provision attached to a an offence

and the exercise of discretion when sentencing is left to sentencing statutes and the common law.

4.12 The Committee did not consider that the Bill should provide express guidance on the way in which the sentencing discretion should be exercised for a number of reasons including:

- The courts are the entity that will have the best expertise in determining , in all the circumstance of the particular case, what is the most appropriate sanction for the offence. In some cases that may well be a fine. In other cases, a fine may not be appropriate (see for example section 53 of the *Sentencing Act 1995* and Part 7 of the *Young Offenders Act 1994*.)

- When sentencing, courts already must listen to pleas in mitigation and examine all the circumstances of the offence and the offender and exercise their discretion accordingly: see for example s.46 and then s 7 of the *Young Offenders Act 1994.*

- If the Bill was to impose restrictions on a court's discretion to impose a fine by stating for example that "the application of any fine in this Act is to be a last resort" a court may be compelled to use other sentencing options prior to the imposition of a fine even in cases where those other sentencing options may not be appropriate. There would be no room for weighing up the many complicated factors that apply to an individual offender.

- It is not possible to determine the many permutations and combinations of facts that may come before a court when considering any particular case. The Committee therefore does not seek to impose restraints on the exercise of a courts' discretion. To do so would be entering into the realm of rewriting sentencing statutes which is outside the Committee's mandate.

Extracts of Other Legislation

Note: These are indicative extracts only - please refer to the full text of each of the Acts for clarification.

SENTENCING ACT 1995

Sentences for a natural person

39. (1) This section applies to an offender who is a natural person.

(2) **Subject to sections 41 to 45**, a court sentencing an offender may —

(a) with or without making a spent conviction order, under Part 6 impose no sentence and order the release of the offender;

(b) with or without making a spent conviction order, under Part 7 impose a CRO (Conditional Release Order) and order the release of the offender;

(c) with or without making a spent conviction order, under Part 8 impose a fine and order the release of the offender (unless an order under section 58 is made);

(d) with or without making a spent conviction order, under Part 9 impose a CBO (Community Based Order) and order the release of the offender;

(e) under Part 10 impose an ISO (intensive supervision order) and order the release of the offender;

(f) under Part 11 impose suspended imprisonment and order the release of the offender; or

[*(g) deleted*]

(h) under Part 13 impose a term of imprisonment.

(3) A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.

...

If statutory penalty is imprisonment or fine: sentencing options

43. (1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that either imprisonment or a fine may be imposed.

(2) If the offender is a natural person the court may use any one of the sentencing options in section 39 (2).

(3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.

(4) If the offender is a body corporate the court may use any one of the sentencing options in section 40 (2).

If statutory penalty is fine only: sentencing options

44. If the statutory penalty for an offence is a fine only, a court sentencing an offender for the offence may —

(a) if the offender is a natural person, use any one of the sentencing options in section 39 (2) (a), (b) and (c); or

(b) if the offender is a body corporate, use any one of the options in section 40 (2).

...

Considerations when imposing a fine:

53. (1) Subject to Division 1 of Part 2, if a court decides to fine an offender then, in deciding the amount of the fine the court must, as far as is practicable, take into account —

(a) the means of the offender; and

(b) the extent to which payment of the fine will burden the offender.

(2) A court may fine an offender even though it has been unable to find out about the matters in subsection (1).

YOUNG OFFENDERS ACT 1994

General principles of juvenile justice

7. The general principles that are to be observed in performing functions under this Act are that —

(a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences;

(b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct;

(c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult;

(d) the community must be protected from illegal behaviour;

(e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so;

(f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so;

(g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardize the protection of the community to do so;

(h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary;

(i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner;

(j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;

(k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time;

(l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and

(m) a young person who commits an offence is to be dealt with in a way that —

(i) strengthens the family and family group of the young person;

(ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and

(iii) recognises the right of the young person to belong to a family.

...

How court to deal with young offenders

46. (1) When dealing with a young person who has been found guilty of an offence, the court, in disposing of the matter, is to apply —

(a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and

(b) the general principles of juvenile justice.

(2) The court is to consider any information about the offender or the offence that may assist the court to decide how to dispose of the matter, and in particular —

(a) the nature and seriousness of the offence;

(b) any history of offences previously committed by the offender;

(c) the cultural background of the offender;

(d) any order previously made by a court when disposing of a charge of an offence that still applies to the offender, and any further order that is liable to be imposed if the offender does not comply with the terms of any such order; and

(e) the extent, if any, to which any person was affected as a victim of the offence.

(3) The court is to dispose of the matter in a way that is in proportion to the seriousness of the offence and is consistent with the treatment of other young persons who commit offences.

(4) In deciding how to dispose of the matter, which includes deciding the appropriate degree of severity to be used, the court is to consider how young the offender is as a mitigating factor.

(5) The court is to have regard to the fact that the rehabilitation of an offender is facilitated by —

(a) the participation of the offender's family; and

(b) giving the offender opportunities to engage in educational programmes and in employment,

but the absence of such participation or opportunities is not to result in the offender being dealt with more severely for the offence.

(5a) Subject to section 106 of the *Road Traffic Act 1974* but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose such a penalty.

(6) The operation of this section is affected by section 125.

...

Enforcing payment of fine by young person who has not reached 18

65. (1) This section applies if a young person has not reached the age of 18 years when —

(a) he or she is fined for committing an offence;

(b) a bail undertaking entered into by him or her under the *Bail Act 1982* is forfeited; or

(c) a recognizance, entered into by him or her under this Act or any other written law in proceedings for an offence is forfeited.

(2) When fining or forfeiting the undertaking or recognizance of the young person, the court is to either —

(a) specify the time within which the amount concerned is to be paid; or

(b) make an order that the amount concerned is to be paid in instalments.

(3) If the young person defaults in the payment of the amount concerned or of any instalment of the amount concerned, the court —

(a) if the young person has reached the age of 18 years, must register the fine or the amount of the forfeited undertaking or recognizance under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless a community work order or a detention order has been made under section 65A in respect of the default or unless sufficient cause to the contrary is shown; or

(b) if the young person has not reached the age of 18 years, must issue the young person with a notice to attend court requiring him or her to appear before the court because of the default, unless sufficient cause to the contrary is shown.

(4) If, after a fine or the amount of a forfeited undertaking or recognizance is registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the amount concerned or any part of it is paid, the court is to notify the Registry immediately.

(5) After a fine or the amount of a forfeited undertaking or recognizance is registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the court cannot make any further order in respect of the payment and the enforcement of the payment of the fine or the forfeited undertaking or recognizance.

Court's powers to deal with defaulter

65A. (1) If a notice to attend court is issued under section 65 (3) to a young person (**``the defaulter''**) and the defaulter appears before the court, the court may invite the defaulter to consent to the making of a community work order in respect of the unpaid amount concerned.

(2) If the defaulter consents to the making of a community work order the court may make one.

(3) If the defaulter does not consent to the making of a community work order, the court, unless sufficient cause to the contrary is shown, is required to make a detention order —

(a) to have effect immediately; or

(b) to have effect if the defaulter is still in default at a specified later date.

(4) The chief executive officer or another officer of the Department may be present at, and is entitled to be heard in, the proceedings to show cause why a detention order should not be made.

(5) If under subsection (3) the court declines to make a detention order the defaulter ceases to be liable to be imprisoned in respect of the failure to pay the amount concerned and neither the fine nor the amount of the forfeited undertaking or recognizance can be registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994.*

Community work order

65B. (1) A community work order is an order having the same effect as a youth community based order imposing community work conditions.

(2) The provisions of this Act with the modifications set out in Schedule 3, apply to a community work order.

(3) If the defaulter fully complies with an order under subsection (1) or if the court discharges such an order, the obligation to pay the amount concerned is satisfied.

And see generally **PART 7 — SENTENCING AND RELATED MATTERS**, in particular
Division 2 — No punishment and no conditions,
Division 3 - No punishment but conditions
Division 4 — No punishment but security or recognizance
Division 5 — Fine
Division 6 — Youth community based order.