



The Hon. Sarah Mitchell MLC
Minister for Education and Early Learning
Deputy Leader of the Government in the Legislative Council

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Mr David Blunt
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NSW Legislative Council
Parliament House
Macquarie Street
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Dear Mr Blunt

It is my pleasure to present a copy of the NSW Government Response to the final report of Portfolio Committee No. 3 – Education Legislation Amendment (Parental Rights) Bill 2020.

Yours sincerely

Sarah Mitchell MLC
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NSW Government Response

**NSW Parliament Legislative Council Portfolio
Committee No.3 – Education**

**Report 44, September 2021 – Education Legislation
Amendment (Parental Rights) Bill 2020**

Introduction

The NSW Government does not support the provisions of the Education Legislation Amendment (Parental Rights) Bill 2020 (Bill) for four reasons:

- a. many aspects of the Bill are enacted through current legislation, through Department of Education (the Department) current practice, and are being enhanced through a new Departmental parental engagement strategy;
- b. some aspects of the Bill are operationally impossible, such as defining a coherent set of community 'core values' agreed upon by all parents;
- c. the Bill may lead to targeted discrimination against a marginalised community which already experiences poorer mental health and wellbeing outcomes; and
- d. other provisions may impact schools' legal obligations to protect and support all students.

Parental Rights and Parental Engagement

The NSW Government remains committed to working with parents as partners in the education of all children across the State. This is enshrined in the *Education Act 1990* (NSW) as one of the four principles of the Act, 'the education of a child is primarily the responsibility of the child's parents'.

Under current provisions of the *Education Act 1990* (NSW), the rights of parents to guide their children's moral development are paramount. These rights are protected by and reflected in the processes of public consultation that have gone into the development of the Australian Curriculum and NSW syllabuses. Parents' rights are further safeguarded at the local level by processes of communication, choice, feedback and complaint within school communities.

The NSW Government is driving increased parental engagement, giving parents and carers more information and support on their child's schooling to promote better education outcomes.

The Department has initiated further enhancements to how parents are engaged in their children's education, emphasising parental and student voice and choice. For example, the new Student and Parent Experience (SPX) Directorate will release a new parental engagement framework in mid-2022, which will set out how parents can more easily access information about what is taught in the NSW education system, how they can engage at system or school level, and make choices about their child's education.

The Department regularly reviews its policies and procedures, and completed a review of its *Controversial Issues in Schools Policy* in 2021. Consultation is being undertaken on improvements to the policy in 2022.

Bill clauses

The Bill cannot be operationalised, as it does not define key terms such as 'core values', and presumes that there is consensus in the community on core values.

A lack of consensus on such issues and values could place schools in the centre of conflict about relevant issues between the parents of a child, between parents and students and also different groups of parents and the broader community. This will divert the focus of schools from the learning and wellbeing of students.

The Bill places a teacher's accreditation and therefore their continued employment at risk if they breach the 'parental primacy' principle when teaching. Staff may also be at potential risk of becoming respondents to discrimination complaints by being required to implement the 'parental primacy' principle.

These risks, enlivened by the legal obligations enshrined in the Bill, will place an unworkable burden on teachers, counsellors and others bound by legal and professional standards.

The proposal to remove the teaching of 'core values such as ethical and moral standards, social and political values' in schools, and to allow students to withdraw from instruction on core values based on parental objection is inconsistent with the NSW Government's legal obligations under the *Australian Education Act 2013* (Cth) and with the national goals in the *Alice Springs (Mparntwe) Education Declaration 2019*.

The health, safety and wellbeing of students

This Bill has the potential to undermine and constrain the ability of teachers and schools to support all students' education and wellbeing.

A key risk of the Bill is the potential to marginalise the LGBTIQ+ community, which is a group already experiencing increased isolation and vulnerability. Seventy-two per cent of gender diverse young people have been diagnosed with an anxiety disorder. Forty-eight per cent of gender diverse young people have attempted suicide in their lifetime. Lesbian, gay, bisexual, transgender and intersex (LGBTI) young people are five times more likely to attempt suicide than their peers (LGBTIQ+ Health Australia February 2020).

Every child has the right to receive an education of the highest quality, and the NSW Government supports the right of every student and teacher to be themselves at school and to fulfil their potential. NSW schools have legal obligations to protect and support students, including those who are same-sex attracted or transgender.

The recommendations of the Parliamentary Committee No. 3 seek to operationalise the Bill's provisions through Departmental policy, which would limit students' engagement with counselling and other supports.

Committee Recommendation	Government Response	Response narrative
<p>Recommendation 1</p> <p>That the Legislative Council proceed to debate the Education Legislation Amendment (Parental Rights) Bill 2020 and the committee comments and stakeholders' views expressed in this report be addressed during debate in the House.</p>	<p>Noted</p>	<p>This is in line with Legislative Council procedure.</p>
<p>Recommendation 2</p> <p>That, in recognition of its obligations under the International Covenant on Civil and Political Rights, the NSW Government support all parental primacy provisions and protections in the Education Legislation Amendment (Parental Rights) Bill 2020 including:</p>	<p>Refer to sub-recommendations below</p>	
<ul style="list-style-type: none"> the statutory recognition of parental primacy in definition, object and principle within the Education Act 1990 and related statutes; 	<p>Noted</p>	<p>The existing objects of the <i>Education Act 1990</i> (NSW) already state that “<i>the education of a child is primarily the responsibility of the child’s parents</i>”.</p> <p>The important partnership between parents and schools in achieving educational outcomes that are in the best interests of the child is considered in all Departmental policies and procedures.</p> <p>The proposed ‘parental primacy’ principle does not recognise the existing legal rights of students to make their own decisions and participate in their own education.</p>
<ul style="list-style-type: none"> the requirement for teaching to be non-ideological; 	<p>Noted</p>	<p>The <i>Education Act 1990</i> (NSW) requires education to be strictly non-sectarian and secular.</p>
<ul style="list-style-type: none"> the enhanced consultation requirements with parents; and 	<p>Noted</p>	<p>The requirement to consult with parents is already embedded in Departmental policies and procedures. Further enhancements to parental consultation are underway as part of the Department’s parental engagement framework.</p>
<ul style="list-style-type: none"> the right for parents to withdraw their children from teaching that is inconsistent with their core values and convictions. 	<p>Not supported</p>	<p>This provision would be unworkable within the general day to day operation of a school. It would provide parents with a general discretion to excuse their child from any aspect of the NSW curriculum or teaching. Conferring such a discretion on parents could be in conflict with the rights of every child to receive an education.</p> <p>The NSW Curriculum is a public document and is available to all parents. The Department’s new parental engagement framework will give more visibility to what parts of the curriculum their children are learning from and when.</p> <p>Schools are required to notify parents where controversial issues are raised in class and to offer parents the chance to withdraw their child from such classes. As part of regular policy review, the Department completed a review of its <i>Controversial Issues in Schools Policy</i> in 2021 and will be consulting and providing further guidance on the updated policy in 2022.</p>
<p>Recommendation 3</p> <p>That, in order to strengthen the provisions in Recommendation 2, and for the purpose of consistency</p>	<p>Not supported</p>	<p>The proposal to expand the scope of sections 26 and 30 to allow students to be withdrawn from instruction on core values based on parental objection is</p>

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<p>in the Education Act 1990, the NSW Government support amending:</p>		<p>inconsistent with the NSW Government’s legal obligations under the <i>Australian Education Act 2013</i> (Cth).</p>
<p>a) Section 26 to broaden conscientious objections by parents beyond 'religious grounds' to cover the teaching of political and ideological dogma to their children; and</p>		<p>Existing provisions of the <i>Education Act 1990</i> (NSW) permit parents to conscientiously object on the basis of their religious beliefs to their children being taught any particular part of a course of study and ask that the child is exempt from attending any related classes.</p> <p>Extending this provision to an undefined concept of 'political and ideological dogma' may allow parents to object to the teaching of fundamental parts of the NSW curriculum, including history and legal studies.</p>
<p>b) Section 30 to broaden the current ban beyond religious dogma to cover political and ideological dogma.</p>		<p>NSW public school students are taught content, concepts and skills according to current syllabuses as mandated by NESA. The Department supports schools with a suite of resources that have been developed by curriculum experts.</p>
<p>Recommendation 4</p> <p>That the NSW Government urgently review and overhaul the Controversial Issues in Schools Policy to afford greater priority and deference to parental rights and to provide, procedurally, more robust protections for parental authority. This reform should include the addition of a list of issues known to be controversial and divisive within school communities, and to be updated by the Department of Education on a regular basis. These should be issues where a significant proportion of public opinion (including parental opinion) is uncomfortable about the teaching of certain material, especially when taught from just one perspective (such as identity politics and gender fluidity). The revised policy should be consistent with and (where relevant) give effect to the parental primacy provisions and protections in the bill in accordance with Recommendation 2 above. Furthermore, the committee recommends that the NSW Government make a concerted effort to inform parents of their rights under the Controversial Issues in Schools Policy. This should include a notification at the beginning of each school year to all parents/guardians by schools and the Department of Education.</p>	<p>Noted</p>	<p>The <i>Controversial Issues in Schools Policy</i> ensures that potentially controversial issues are managed in NSW Public Schools.</p> <p>A review of the Policy was undertaken in 2021, and will be consulted on in 2022. The review focused on developing responsive strategies and tools to help school staff navigate the management of issues as they arise and strengthening existing frameworks for parental engagement to ensure that parents are engaged and informed of their rights with regard to controversial issues.</p>
<p>Recommendation 5</p> <p>That the NSW Government make it mandatory for all government schools to display on their website and update regularly, a clear outline of what they are teaching, with an associated list of text books and other learning materials used in their classrooms, including instruction and materials provided by external</p>	<p>Noted</p>	<p>Schools publish their school plans and consult with their community as plans are developed and updated. This includes key teaching and learning strategies.</p> <p>Providing a list of every resource used in every lesson for every student is impracticable and would create an unreasonable administrative burden on teachers and schools.</p>

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consultants, in accordance with the committee's conclusions set out in this report.		
<p>Recommendation 6</p> <p>That the NSW Government establish mandatory State-wide protocols and standards for maximising school communications with parents. For this purpose, the NSW Government should benchmark existing school best practice in this regard and require all schools to reach this standard.</p>	<p>Supported in principle</p>	<p>The Department is committed to bringing in best practice from across education and other sectors to support and improve parent and carer choice, voice, and agency in the education system.</p> <p>Schools undertake extensive parental engagement and communication. All schools are required to participate in community engagement and the Tell Them From Me survey of students and parents, which informs future policy and protocols.</p> <p>The Department has recently established the Student and Parent Experience (SPX) Directorate which is developing improved strategies for parental and student engagement and complaint handling.</p> <p>Under the School Success Model, schools and pedagogical practices recognised as high performing will be identified, analysed, and shared across the whole school system, allowing all schools to benefit from the experience of the best practice.</p>
<p>Recommendation 7</p> <p>That the Legislative Council amend the Education Legislation Amendment (Parental Rights) Bill 2020 to remove the proposed legislative provisions concerning gender fluidity.</p>	<p>Noted</p>	<p>The Bill's proposed Section 3(1) definition of 'gender fluidity' is inconsistent with the definition of gender identity and intersex status under the <i>Sex Discrimination Act 1984</i> (Cth) and the definition of a transgender person under the <i>Anti-Discrimination Act (1977)</i> (NSW).</p> <p>'Gender fluidity' is not, and has never been, part of any NSW syllabus. It is not a recognised concept or definition in the Australian Professional Standards for Teachers, against which all NSW teachers are accredited, nor is it part of any of the Initial Teacher Education course accreditation requirements that apply in NSW.</p>
<p>Recommendation 8</p> <p>That the NSW Government update <i>Bulletin 55: Transgender Students in Schools</i> based on the following principles:</p>	<p>Refer to sub-recommendations below</p>	<p>Under the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) all institutions, services and facilities responsible for the care and protection of children and young persons must provide an environment free of violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity.</p> <p>All NSW schools have legal obligations to protect and support all students. NSW Public Schools are required to have a planned approach to develop whole school wellbeing processes that support all students to connect, succeed and thrive.</p> <p>Schools consult with students and their parents or carers when planning for a student's wellbeing needs.</p> <p>The Committee's Recommendation 8 would limit students' engagement with counselling and other supports and has the potential to create, or exacerbate, health and wellbeing risks.</p> <p>This Bill has implications for the Child Safe Standards, <i>Health Records and Information Privacy Act 2002</i> (NSW) and the <i>Privacy and Personal Information and Protection Act 1998</i> (NSW) along with law and policy reform measures taken by the NSW Government in response to the Royal Commission into Institutional Responses to Child Sexual Abuse.</p>

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<p>1. The Safe Schools program and Gayby Baby movie are prohibited in NSW Government schools. Gender fluidity is not part of the NSW school curriculum and therefore, should not be taught or promoted, either in classrooms, teacher professional development, by external consultants, special school activities or through the distribution of material to teachers or students. This prohibition also applies to the teaching of gender as a 'social construct'.</p>	<p>Noted</p>	<p>All NSW schools have legal obligations to protect and support their students, including those who are same sex attracted or transgender. NSW Public Schools are required to have a planned approach to develop whole school wellbeing processes that support all students to connect, succeed and thrive.</p> <p>Schools consult with students and their parents or carers on a case-by-case basis when planning to support the specific needs of individual students.</p> <p>The Legal Issues Bulletin will be amended to clarify that the Safe Schools Program is not, and has never been, part of the NSW curriculum, and the NSW Government does not promote this program or its resources.</p>
<p>2. As with all school students, transgender students must be treated with care, compassion, dignity and inclusion, free from discrimination, harassment, vilification and violence. They must be able to access all school classes, services and activities.</p>	<p>Supported</p>	<p>This is existing NSW Government policy.</p>
<p>3. Schools cannot regard a student as transgender without regard to advice from medical experts and/or parents/guardians. Schools must always inform parents/guardians of relevant information and involve them at every stage of the decision-making process.</p>	<p>Not supported</p>	<p>Departmental policies require parents to be involved in decision making about school-based supports, except where a court has extinguished a parent's decision-making powers or student welfare is at risk. The <i>Education Act 1990</i> (NSW) and <i>Family Law Act 1975</i> (Cth) require decisions to be made primarily on what is considered to be in the best educational and welfare interests of the child.</p>
<p>4. No school or school staff can withhold information from parents about the gender or gender transition of a student at the school, other than by a court order or acting with the advice of a government child protection agency.</p>	<p>Not supported</p>	<p>Under existing laws, including the <i>Health Records and Information Privacy Act 2002</i> (NSW) and the <i>Privacy and Personal Information and Protection Act 1998</i>, (NSW) parents are entitled to information only about their own child provided that the student is under the age of 18 years.</p>
<p>5. No student has the right or capacity to stop the school telling their parents information about their gender, where the school is obliged to do so.</p>	<p>Not supported</p>	<p>Students have legal rights, including under the <i>Sex Discrimination Act 1984</i> (Cth), <i>Anti-Discrimination Act 1977</i> (NSW), <i>Health Records and Information Privacy Act 2002</i> (NSW), and the <i>Privacy and Personal Information and Protection Act 1998</i> (NSW), and these rights are legally enforceable.</p>
<p>6. No student under the age of 18 can change their name at school (away from the name on their birth certificate) without the consent of both parents/guardians with whom they live. In the case of shared custody, the consent of both parents is required.</p>	<p>Not supported</p>	<p>There are a range of circumstances in which a name can be changed without explicit consent from parents (for example by court order, through adoption, on the advice of a child protection agency). Schools work with parents and children to recognise and respect the best interests of the child, in line with their obligations under the <i>Education Act 1990</i> (NSW).</p>
<p>7. Transgender students should be allowed to wear the school uniform of their choice and preference.</p>	<p>Supported</p>	<p>This is existing NSW Government policy.</p>
<p>8. In school sport, once students reach high school (Year 7) they should not compete outside of their biological gender. This policy recognises the strength advantages teenage boys develop over girls.</p>	<p>Not supported</p>	<p>Existing Sport and Physical Activity policies and associated sport safety guidelines give effect to the Government's commitment to the right of all students to safely participate in school sports. Schools manage these issues on a case by case basis in line with the policies.</p>

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<p>9. Other than in circumstances of a full medical gender transition, students born biologically male shall not be allowed in female toilets, change rooms, dormitories and excursion accommodation; and vice versa for students born biologically female. Third options shall be made available for these students, such as administrative block toilets and change rooms.</p>	<p>Not supported</p>	<p>Decisions about suitable toilet arrangements and accommodation for all students are made based on what is reasonably required to protect students from foreseeable risk of harm.</p>
<p>10. If schools establish, either on the initiative of teachers or students, groups involved with support and discussion of matters concerning gender and sexuality (such as LGBTIQIAP support groups), students under the age of 18 shall only participate following the granting of parental consent.</p>	<p>Not supported</p>	<p>Any extra-curricular activity established by the school must comply with the <i>Controversial Issues in Schools Policy</i>.</p>
<p>11. For students aged under 18 years, school counsellors should not involve themselves in questions of gender fluidity and transition without prior reference to parents and any medical professionals advising the student and parents on this matter. Parents have the right to know if gender fluidity and transition are being discussed at school. School counsellors must liaise with parents and relevant medical professionals as much as possible.</p>	<p>Not supported</p>	<p>Placing restrictions on school counsellors in this manner is complex and would be in conflict with the obligations of counsellors arising from the requirements of their professional organisations and legal requirements.</p> <p>School counselling staff always seek to work in partnership with students, school wellbeing staff and parents.</p> <p>School counselling staff disclose confidential information obtained in the course of their work with the consent of the student or a person with legal authority to act on behalf of the student, or where there is a legal obligation to do so. Legal obligations include health, safety, welfare or wellbeing risks, child protection concerns, mandatory reporting requirements or subpoenas.</p> <p>Limiting the engagement of students with counselling services places them at increased risk, is a breach of legal obligations under the duty of care and health and safety law and is also inconsistent with the Premier's Priority - Towards Zero Suicides.</p>
<p>12. If a student has changed their gender, their parents shall be consulted about the best way of communicating this to the school community. Parents of other children in the same year group should be notified of the change, allowing them to talk to their children in advance.</p>	<p>Noted</p>	<p>The extent and nature of communication with a school community is decided on a case by case basis in consultation with the student and their parents, in line with existing policy and in accordance with privacy and other legal obligations.</p>
<p>Recommendation 9</p> <p>That the NSW Government review the updated <i>Bulletin 55: Transgender Students in Schools</i> two years after its introduction, assessing its effectiveness and compliance by schools.</p>	<p>Supported</p>	<p>All NSW Government policies are periodically reviewed to ensure their continued alignment with overarching Government policy and operational effectiveness.</p>