

PORTFOLIO COMMITTEE NO. 3 – EDUCATION

INQUIRY INTO THE EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020

Hearing – 20 April 2021

Supplementary questions for Mrs Terri Kelleher, A/National Vice President, Australian Family Association

Q1 What exactly does *Legal Issues Bulletin 55* require in relation to access by transgender students to toilets, change rooms and showers and school camp accommodation? How are you saying it discriminates against and how is it a risk to the safety of girls?

- A. The [NSW Legal Issues Bulletin 55](#) (the Bulletin) – “Transgender students in schools” – says in the introductory paragraphs that: “All students, including those who identify as transgender, have a right to be treated equitably and with dignity.... ” and that Department of Education resources promote “...development of positive school environments in which every student is respected and valued.”

Admittedly the Bulletin is specifically about transgender policy but it is only the rights or needs of transgender students that are taken into account and no real consideration is given to how the rights of other students, in particular girls, may be impacted or erased.

The Bulletin provides: “Students should *not be required* to use the toilets and change rooms used by persons of the sex they were assigned at birth if they identify as a different gender. Alternative arrangements may include using staff toilets or unisex toilets where possible. *The exclusion of students who identify as transgender from the toilet or change rooms of their identified gender must be regularly reviewed to determine its continuing necessity.*”

Regarding school camp accommodation the Bulletin says: “*Ordinarily, a student who identifies as transgender should use the facilities of their identified gender or unisex facilities when available.*”

It is an implication that any “alternative arrangements” are viewed negatively as they are to be “regularly reviewed” to determine if they are necessary.

Further the “alternative arrangement” of unisex toilets or school camp accommodation has even further safety issues for girls – see answer to Q2 below.

This does not provide confidence that the right of girls to the privacy and security of their intimate spaces must also be protected as well as providing for transgender students. Girls have a right flowing naturally from their biological sex to privacy and security in places where they may be in a state of undress or asleep and therefore feel vulnerable. A biological boy who identifies as a girl is not necessarily a threat to

girls' safety but allowing such transgender student to share girls' intimate spaces does erase girls' right to their privacy and their bodily integrity.

Further the Bulletin provides that: "If other students indicate discomfort with sharing single-sex facilities (toilets or change rooms for example) with a student who identifies as transgender, *this should be addressed through the school learning and support team.*" Will girls who "indicate discomfort" be counselled that a transgender student sharing their intimate spaces takes priority over their right to privacy and comfort in those spaces?

Is this not discrimination against girls on the basis of their sex, treating them "less favourably" than a transgender student who identifies as a girl and is to be accorded rights that naturally flow from being female?

To fairly resolve these situations of conflict which arise under the policy set out in the Bulletin there needs to be respectful and open discussion of the needs and rights not only of students identifying as transgender but of *all* students who are affected.

Q2. Can you explain what the risk to the Education Department may be in relation to the schools policy in *Legal Issues Bulletin 55* around access by transgender students to the toilets, change rooms, showers and school camp accommodation of their choice?

- A. There will always be a risk if a natal male is allowed to share facilities such as toilets, change rooms and showers and overnight accommodation with girls. Is the Education Department comfortable with bearing the risk, however low, of sexual assault of a girl in such a shared facility?

The risk is greater with uni-sex facilities as that gives access to any natal male to share intimate spaces with girls. Creating such a situation increases the chance of a boy sexually assaulting a girl. In high schools uni-sex facilities mean an 18 year old boy can be sharing toilets, change rooms and showers with 12 year old girls.

The Education Department's risk is of action for damages for failure of a school's duty of care to a girl student who is the victim of a sexual assault in shared facilities at the school.