

**Submission  
No 393**

**INQUIRY INTO EDUCATION AMENDMENT (ETHICS  
CLASSES REPEAL) BILL 2011**

**Organisation:** FamilyVoice Australia

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## **Submission**

on the

### **Education Amendment (Ethics Classes Repeal) Bill 2011**

to the

### **General Purpose Standing Committee No. 2**

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## 1. Introduction

Following a trial of special education in ethics in 10 schools in New South Wales during 2010, the *Education Act 1990* (the Act) was amended in December 2010 by the *Education Amendment (Ethics) Act 2010*. This amendment provided a legal basis for the teaching of special education in ethics in government schools.

Section 33A was added to the Act and reads as follows:

### *33A Special education in ethics as secular alternative to special religious education*

- (1) Special education in ethics is allowed as a secular alternative to special religious education at government schools.*
- (2) If the parent of a child objects to the child receiving special religious education, the child is entitled to receive special education in ethics, but only if:
  - (a) it is reasonably practicable for special education in ethics to be made available to the child at the government school, and*
  - (b) the parent requests that the child receive special education in ethics.**
- (3) A government school cannot be directed (by the Minister or otherwise) not to make special education in ethics available at the school.*

On 5 August 2011 the Hon Rev Fred Nile MLC introduced the *Education Amendment (Ethics Classes Repeal) Bill 2011* into the Legislative Council. This Bill seeks to repeal section 33A of the *Education Act 1990*. If passed the repeal would not affect any arrangements already in place in schools until the next school year.

On 11 November 2011 the Bill was referred for inquiry to the General Purpose Standing Committee No.2. The terms of reference for the inquiry include inquiring into “*the stated objectives, curriculum, implementation, effectiveness and other related matters pertaining to the current operation of ‘special education in ethics’ being conducted in State schools*” as well as whether section 33A of the Act should be repealed.

The Committee has invited submissions which were initially due by 24 February 2012 but this was extended to 28 February. It is due to report by 4 June 2012:

## 2. Parents as the primary educators of their children

Parents, having given life to their children or taken on responsibility for them through adoption, are their principal educators. Parents have the natural right and responsibility to supervise the education of their children.

This right is recognised in Article 26 (3) the *Universal Declaration on Human Rights* which states

*Parents have a prior right to choose the kind of education that shall be given to their children.*

In New South Wales, acknowledgement of this right and responsibility of parents is expressed in sections 22 and 23(2) and in the provisions of Part 7 of the *Education Act 1990*. The Act acknowledges that parents are free to educate their children at home, or to send their children to a

school of their choice, including to a school established on a particular religious basis or to reflect a particular philosophy of education, or to send their children to a government school.

Section 30 of the *Education Act 1990* provides that:

*In government schools, the education is to consist of strictly non-sectarian and secular instruction. The words "secular instruction" are to be taken to include general religious education as distinct from dogmatic or polemical theology.*

It is important to note that in this context "secular" means precluding any specific dogmatic religious point of view. It does *not* mean a specifically anti-religious, humanistic or atheistic point of view.

Recognising that many parents who elect to send their children to government schools nonetheless consider specifically religious education an important and integral part of their child's overall education the *Education Act 1990* provides in section 32 for time "to be allowed for the religious education of children of any religious persuasion" in government schools. This "special religious education" is to be given "by a member of the clergy or other religious teacher of that persuasion authorised by the religious body to which the member of the clergy or other religious teacher belongs".

Section 33 of the Act provides that "No child at a government school is to be required to receive any general religious education or special religious education if the parent of the child objects to the child's receiving that education."

General religious education is not currently taught as a separate subject but is integrated into the curriculum. Nonetheless parents have the right to "conscientiously object on religious grounds to a particular part of a course of study".<sup>1</sup>

It is vital to maintain this right to conscientious objection. A recent decision by the Supreme Court of Canada effectively denied parents the right to withdraw their children from the Ethics and Religious Culture course presented in Quebec schools as an allegedly neutral approach to religion and ethics.<sup>2</sup>

From the point of view of those who believe that specific religious doctrine is true, a course of general religious education which is limited to a presentation of the different religions, in a comparative and allegedly neutral way, can be seen in itself to lead to religious relativism or indifferentism.<sup>3</sup> Parents holding this view should be entitled to withdraw their children from any such presentation.

***Recommendation 1:***

***The Education Act 1990 should continue to acknowledge parents' role as the primary educators of their children by providing for:***

- (a) parental choice of home schooling, non-government schooling (including at schools established on the basis of a particular religious belief) or government schooling;***
- (b) government schools being required to make special religious education available for all children whose parents do not object to them receiving it; and***
- (c) the right of parents to withdraw children both from special religious education and from general religious education.***

### **3. General and special education in government schools**

The provisions in the *Education Act 1990* outlined above indicate that the prior right and responsibility of parents to determine the education of their children is satisfied in two ways that might be called *general education* and *special education*.

#### **3.1 General education**

The term “general education” is used here to describe the teaching of subjects on which there is broad agreement in the community (such as English, maths, science and general religious education). Here parents have the right to withdraw their children on religious grounds from contentious elements, under section 26 of the Act which states:

##### *26 Certificate of exemption from attending particular classes*

*(1) The parent of a child enrolled at a government school may give the Director-General written notice that the parent conscientiously objects on religious grounds to the child being taught a particular part of a course of study.*

*(2) The Director-General may accept any such objection and grant a certificate exempting the child from attending classes relating to the part of the course concerned if satisfied that the objection is conscientiously held on religious grounds.*

*(3) A certificate of exemption under this section may be given subject to conditions.*

*(4) A certificate of exemption under this section may be cancelled by the Director-General.*

This important provision enables parents – on reasonable, conscientious grounds – to exercise their right to supervise the education of their children in government schools.

#### **3.2 Special education**

The term “special education” is used here to describe the teaching of subjects on which significant differences of opinion exist in the community, particularly regarding religious beliefs and values. In order to cater for differing opinions, this special education is taught by people, other than employed departmental teachers, who parents are confident will represent their views.

Section 32 of the Act provides for Special Religious Education (SRE) as follows:

##### *32 Special religious education*

*(1) In every government school, time is to be allowed for the religious education of children of any religious persuasion, but the total number of hours so allowed in a year is not to exceed, for each child, the number of school weeks in the year.*

*(2) The religious education to be given to children of any religious persuasion is to be given by a member of the clergy or other religious teacher of that persuasion authorised by the religious body to which the member of the clergy or other religious teacher belongs.*

*(3) The religious education to be given is in every case to be the religious education authorised by the religious body to which the member of the clergy or other religious teacher belongs.*

(4) *The times at which religious education is to be given to children of a particular religious persuasion are to be fixed by agreement between the principal of the school and the local member of the clergy or other religious teacher of that persuasion.*

(5) *Children attending a religious education class are to be separated from other children at the school while the class is held.*

(6) *If the relevant member of the clergy or other religious teacher fails to attend the school at the appointed time, the children are to be appropriately cared for at the school during the period set aside for religious education.*

This important provision allows parents of different religious persuasions to exercise their right to supervise the religious education of their children in government schools by selecting appropriate religious education classes from those offered in the school by approved providers.

At the time of writing this submission, the current list of approved religious education providers was not available. However previously approved providers have included Anglican, Roman Catholic, Baptist, Orthodox, Pentecostal, Presbyterian, Uniting and other Christian churches, as well as Bahá'í, Buddhist, Hindu, Islamic and Jewish groups.

This diversity of approved providers is similar in Victoria, where the government uses two major organisations to approve religious instructors: ACCESS Ministries and the World Conference of Religions for Peace (WCRP). ACCESS delivers a Christian Religious Education (CRE) program with a syllabus agreed by 12 Christian denominations. WCRP approves religious instructors in other recognised faiths including Bahá'í, Buddhism, Sikhism, Hinduism and Orthodox Christianity. Also, the Catholic Education Office and United Jewish Education Board accredit religious instructors in their respective faiths.<sup>4</sup>

### **Meaning of religion**

The Victorian list of approved providers covers a wide range of Christian and non-Christian religions, and it is important to consider how wide the definition of *religion* should be for the purposes of religious education in government schools.

In an important decision, the High Court of Australia defined the meaning of *religion* in Australia in its judgement on the "Scientology case".<sup>5</sup> The definition establishes that *religion* involves both *belief* and *conduct*. Justices Mason and Brennan held that:

*for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief...<sup>6</sup>*

Different religions may have incompatible views on both belief and conduct. They may have different beliefs about "a supernatural Being, Thing or Principle" and their beliefs may be completely incompatible: an assertion of truth by one religion may be denied as false by another (and vice versa). For example, some are monotheistic while others are polytheistic. Different religions may also be incompatible in their respective codes of conduct. For example, Christians are free to eat pork but a man may marry only one wife, whereas Muslims must not eat pork but men are free to marry more than one wife.

The fundamental incompatibilities of belief and conduct between different religions is the reason that separate special religious education classes are held at the same time, so parents have the opportunity to choose the appropriate class for their children.

## **Informed parental choice**

For parents to be able to make an informed choice about the appropriate special religious education class for their children, information needs to be readily available about the curriculum being taught.

In Victoria, the major provider of Special Religious Instruction is ACCESS Ministries, which has on its website an outline of the curriculum being taught.<sup>7</sup> In Sydney, one of the approved SRE providers is the Anglican Church, Diocese of Sydney, which uses the curriculum produced by Christian Education Publications (CEP). This is the largest publisher of religious education curriculum designed for use in Australian and New Zealand schools.<sup>8</sup> The CEP curriculum is available online.<sup>9</sup>

All authorised providers of SRE in NSW government schools should enable parents to exercise an informed choice by making the curriculum they use available online.

## **Religion and community**

A significant benefit of religion to society is that religion builds community and communities build society.

Richard Sosis, an anthropologist at the University of Connecticut, conducted a study of 200 religious and secular 19th-century US communes to determine which survived the longest – religious or secular.<sup>10</sup> The results were clear: the religious communes had much greater longevity than the secular communes. Religious communes were more likely than secular communes to survive at every stage of their life course. His explanation is that religious beliefs foster commitment and loyalty among individuals who share those beliefs.

US scholar Robert Putnam in his book *Bowling Alone* observes that we moderns are a disconnected lot.<sup>11</sup> Isolation, not community, is the measure of our lives. And David Bodenhamer, Director of The Polis Center, Indianapolis, US, comments:

*We bowl alone today, whereas we once bowled in leagues. This change symbolizes the decline of social capital in America. The ties that bind us in community—social capital—are weaker now than in our past... Religion fosters community in a variety of other ways. Soup kitchens, clothing closets, mission projects are religious activities in support of community. Religious institutions also create and sustain local community development corporations, job training, youth programs, and daycare. In Greater Indianapolis there are countless connections between faith and community.*<sup>12</sup>

Communities form the basis of civil society, which has been defined by the London School of Economics Centre for Civil Society as follows:

*Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.*<sup>13</sup>

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as having a vital role in a democratic order.<sup>14</sup> They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in



politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

Religion therefore makes an important contribution to democracy in Australia through the development of communities and the fostering of civil society.

### **Accreditation of providers**

Each provider of SRE in NSW government schools should be required to establish that it:

- represents a *religious persuasion*;
- has an associated *religious community* and
- is *not a threat to public order*.

Establishing that an SRE provider represents a *religious persuasion* should use the criteria for a religion set by the High Court of Australia (quoted above), namely that it espouses both *belief* and *conduct*. The identified *belief* should establish the source of authority respected by that religious persuasion. The identified *conduct* should establish the *values* and *canons of conduct* that give effect to the identified belief.

An SRE provider should be required to establish that it has an associated *religious community* in the form of a voluntary association. One definition of a voluntary association is “a group of individuals who enter into an agreement as volunteers to form a body to accomplish a purpose.”<sup>15</sup> Most religious groups that meet on a regular basis would satisfy this criterion.

The protection of *public order* is an important role of governments. The *International Covenant on Civil and Political Rights* (ICCPR), which recognises the fundamental right of parents to determine the education of their children (Article 18(4)), also recognises legitimate limitations on religious freedom. Article 18(3) recognises that freedom to manifest one's religion or beliefs may be subject to “limitations necessary to protect public safety...”<sup>16</sup>

#### **Recommendation 2:**

***Special Religious Education should continue to be provided in NSW government schools as a voluntary option which parents can choose for their children, on the basis that approved providers:***

- (a) should be religious, upholding beliefs, values and canons of conduct, consistent with the definition of religion by the High Court of Australia;***
- (b) should make a curriculum available publicly, so that parents may make an informed decision about appropriate SRE classes for their children;***
- (c) should be related to religious communities in the form of voluntary associations; and***
- (d) should provide a curriculum that is not a threat to public order.***

## 4. Special education in ethics

Section 33A(1), added to the *Education Act 1990* in December 2010, states that:

*Special education in ethics is allowed as a secular alternative to special religious education at government schools.*

It is not clear what meaning “secular” is meant to have in this context. Nothing in the Minister’s second reading speech on the *Education Amendment (Ethics) Bill 2010* addressed this point. Nor is any further explanation or definition provided in the Act.

Section 30 of the Act provides that all instruction (other than special religious education) given to students in government schools will be “secular instruction”. As noted above, in this context “secular” means precluding any specific dogmatic religious point of view. It does *not* mean a specifically anti-religious, humanistic or atheistic point of view.

Provision is already made for *general religious education* in Section 30 of the Act, as part of the secular instruction in NSW government schools. The provision for *secular education in ethics* in Section 33A seems to be a duplication of the provision for *general religious education* and therefore redundant.

### 4.1 Lack of detail in Section 33A

Section 33A mandates that government schools offer “special education in ethics” when it “is reasonably practicable” for the school to do so.

The section doesn’t actually define “special education in ethics”. Nor does Section 33A make it clear who will deliver special education in ethics. Nor does the section specify in any way what the content of special education in ethics might be and who is authorised to approve the content.

This is in stark contrast to the provisions for special religious education in section 32 which provides clearly who is to give the education and that its content must be authorised by the appropriate religious body.

Currently the only “special education in ethics” on offer is being delivered by Primary Ethics, a not-for-profit company established by the St James Centre for Ethics.

Its approach to ethics is a particular philosophical approach. This approach includes “*encouraging children that there was no right or wrong answer*” to ethical questions.<sup>17</sup>

It is not clear what section 33A would require of government schools if groups other than Primary Ethics offered to deliver “special education in ethics” in schools.

In the Minister’s second reading speech on the *Education Amendment (Ethics) Bill 2010*, she stated that the Act as it stood before the amendment bill was passed “*did not require amendment to allow the choice of an ethics course. An ethics course merely needs to be inserted in this time set aside for religious instruction for those parents who have exercised the choice legislated to them in section 33 [to withdraw their children from special religious education].*”

Section 33A of the Act should be repealed and careful consideration given to introducing an appropriate legal framework for government schools to provide other alternatives for parents who are not satisfied with the currently available options for special religious education.

## 4.2 Political context

Section 33A was inserted into the Act in the political context of a Labor government facing defeat at a forthcoming election seeking to hamper the freedom of the likely incoming government from making its own considered decisions on the provision of special education in ethics in schools.

Moving immediately from a one year trial offered only to years 5 and 6 in only 10 government schools to enshrining "special education in ethics" in legislation was inappropriate and unnecessary.

The current bill would merely restore the *status quo ante* and leave the current government free to continue with the trial of special education in ethics as it sees fit, based on the ongoing experience with this experiment in schools.

Much more consideration needs to be given to how best to provide an acceptable option for those parents who wish to withdraw their children from the currently available special religious education classes.

## 4.3 Philosophical ethics

The *special education in ethics* program was developed after the Federation of Parents and Citizens' Associations in NSW, with the support of the St James Ethics Centre, had advocated over some seven years for a "meaningful option" for those children who opt out of SRE.<sup>18</sup> The St James Ethics Centre explains that:

*The NSW government tasked St James Ethics Centre to develop and deliver ethics education classes in urban, regional and rural primary schools. St James Ethics Centre promptly established Primary Ethics Limited, an independent not-for-profit organisation, to develop an engaging, age-appropriate, interconnected curriculum that spans the primary years from Kindergarten to Year 6 and to then deliver ethics education free of charge via a network of specially trained and accredited volunteers.*<sup>19</sup>

The Centre engaged Associate Professor Philip Cam from the University of NSW to develop a ten-lesson Ethics program to be run during the time allocated for SRE in Term 2, 2010. Professor Cam has had a long term interest in philosophy for children as evidenced by his publications on the subject.<sup>20</sup> He is president of The Philosophy in Schools Association of New South Wales, a non-profit organization dedicated to promoting and supporting philosophy in schools in New South Wales.<sup>21</sup>

A report on the 2010 trial, commissioned by the NSW Department of Education and Training (DET) and conducted by a team from the University of South Australia, headed by Dr Sue Knight, was published in October 2010.<sup>22</sup> One of the significant suggestions made in the report was that:

*"in any wider roll-out of an ethics-based complement to scripture, it be made clear that the term 'ethics-based' means 'based on Ethics as a branch of Philosophy', or ... be described as a course in Philosophical Ethics..."*<sup>23</sup>

The report explains that:

*Professor Cam's curriculum is directed towards meeting the following four of goals set for the pilot course, viz.:*

- introduc[ing] the language of ethics and in doing so... provid[ing] the tools to survey the values and principles we live by;*
- develop[ing] the intellectual capacity and the personal attitudes needed for participating in ethical reflection and action;*

• *develop[ing] students' ability to identify the relevant stakeholders and thoroughly explore, among other things, the consequences of proposed resolutions to the ethical dilemmas which they are considering; and*

• *inspir[ing] an appreciation of virtues and ideals.*<sup>24</sup>

Clearly, this is a course in philosophy – it is concerned with the rational exploration of questions such as “How ought one to live?”<sup>25</sup> As the report explains:

*In most lessons ... students (in groups) consider a scenario, form an opinion on it, and provide reasons in support of that opinion... But the fact that an individual has offered a justificatory claim does not mean that the justification is sound. Some attempts at justification are better than others. To deny this is to embrace the dangerous position of moral relativism, the idea that ‘anything goes’, the dangers of which are all too clear.*<sup>26</sup>

Some principals “gained the impression from observing classes that there are ‘no right and wrong answers’ required in ethics, or, as another principal put it, that the ethics program place little emphasis on the development of a ‘moral compass’.”<sup>27</sup>

The nature of the course raises a number of questions:

- Is it misleading for a course in philosophy to be presented as a course in ethics?
- Is it appropriate for a period set aside for instruction in beliefs and values to be used for a course with no declared beliefs or values?
- Is the course likely to lead students towards moral relativism and the potential societal danger of anarchy?
- Do school students have sufficient life experience and maturity to understand the societal consequences of different moral choices?
- Were those requesting an alternative to SRE expecting a course in philosophical ethics, or a course to provide a “moral compass”?
- Would a different approach and curriculum better serve those parents seeking an alternative to currently offered SRE programs?

***Recommendation 3:***

***The Education Amendment (Ethics Classes Repeal) Bill 2011 should be supported to restore the Education Act 1990 to the form it was in prior to the rushed passage of the Education Amendment (Ethics) Bill 2010. This would allow the government freedom:***

***(a) to continue exploring suitable approaches to special instruction for children whose parents withdraw them from the currently available options for special religious education; and***

***(b) to introduce an appropriate legal framework for government schools to offer alternatives to currently available special religious education courses.***

## 5. Endnotes

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2. Supreme Court of Canada, *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7: <http://scc.lexum.org/en/2012/2012scc7/2012scc7.html>
3. Cf. Congregation for Catholic Education, *Circular Letter to the Presidents of Bishops' Conferences on Religious Education in Schools*, 5 May 2009, para 12: [http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20090505\\_circ-insegn-relig\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20090505_circ-insegn-relig_en.html)
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5. *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120.
6. *Ibid.*, para 17; their judgement was qualified by also holding that “though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.”
7. *ACCESS Ministries curriculum*: <http://www.accessministries.org.au/creteachers/curriculum-information>
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13. *What is civil society?* Centre for Civil Society, London School of Economics, 1 January 2004.
14. Almond, G. & Verba, S; *The Civic Culture: Political Attitudes And Democracy In Five Nations*, Sage, 1989.
15. “Voluntary association”, *Wikipedia*: [http://en.wikipedia.org/wiki/Voluntary\\_association](http://en.wikipedia.org/wiki/Voluntary_association)
16. *International Covenant on Civil and Political Rights*, Article 18(3): “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
17. Quote from Angela Robertson, Primary Ethics facilitator, interviewed in video clip, “What happens in ethics classes?”: <http://www.primaryethics.com.au/whathappens.html>
18. Federation of Parents and Citizens' Associations of New South Wales, 2009, *Submission on the Ethics Program*, St James Ethics Centre, p 1.
19. <http://www.ethics.org.au/content/ethics-based-complement-to-scripture>
20. <http://humanities.arts.unsw.edu.au/staff/philip-cam-77.html>
21. <http://www.philosophyinschoolsnsw.com.au/index.php?page=contact>

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22. Knight, Sue, *NSW Ethics Course Trial, Final Report*, Oct 2010, (University of South Australia):  
[https://www.det.nsw.edu.au/detresources/Ethics\\_Evaluation\\_Final\\_Report\\_11112010\\_HQssrhmwK.pdf](https://www.det.nsw.edu.au/detresources/Ethics_Evaluation_Final_Report_11112010_HQssrhmwK.pdf)

23. *Ibid.*, p 6.

24. *Ibid.*, p 8.

25. *Ibid.*, p 45.

26. *Ibid.*, p 18.

27. *Ibid.*, p 12.