

**Submission
No 11**

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

Name: Dr Elizabeth Coombs and Ms Colette Mahieu MA

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NSW Parliament Legislative Council
Portfolio Committee No. 3 – Education Inquiry
Education Legislation Amendment (Parental Rights) Bill 2020

1. The Education Legislation Amendment (Parental Rights) Bill 2020 proposes to amend:

1. *the Education Act 1990 No. 8*
2. *the Education Standards Authority Act 2013 No. 89*
3. *the Teacher Accreditation Act 2004 No. 65*

to “provide that schools must recognise that parents are primarily responsible for the development and formation of moral and ethical standards and social and political values in their children, including an understanding of the personal identity and questions of gender and sexuality and to prohibit schools, teachers, and training courses from teaching gender fluidity, and for other purposes.”¹

2. The Bill in effect, proposes to prohibit, for all students, the teaching of gender diversity, and, to sanction teachers and other professionals for teaching a curriculum or providing information in line with international human rights standards.

3. The Second Reading Speech² cites Article 18(4) of the *International Convention on Civil and Political Rights* (ICCPR) as the “international standard” establishing parental authority for the education of their children.

4. Article 18(4) ICCPR is not the applicable international human rights standard for decisions concerning children’s education. While it is related to guarantees of the freedom to teach a religion or belief expressed in Article 18(1) of the ICCPR, Article 18(4) does not:

- a) establish that (some) parents have the authority to prohibit in the educational setting or from the curriculum, comprehensive sexuality education including material relating to non-binary gender, or
- b) prohibit public education that includes instruction inconsistent with the religion or beliefs of parents; Article 18(4) requires provision for non-discriminatory exemptions or alternatives for such instruction.

5. The standard for the promotion and protection of the rights of the child, including the child’s right to education, is the *Convention on the Rights of the Child (1989)*³ as re-affirmed by the UN General Assembly on 12 November 2020.⁴

¹ Education Legislation Amendment (Parental Rights) Bill 2020, Object, p1.

² Second Reading Speech, Legislative Council Hansard, 5 August 2020.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531. The *Convention of the Rights of the Child* has achieved near universal acceptance with ratification by 193 parties. The exception is the USA.

⁴ UN General Assembly, Resolution Protecting children from bullying, 12 November 2020, at A/C.3/75/L.16/Rev.1 at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N20/311/11/PDF/N2031111.pdf?OpenElement>

Convention on the Rights of the Child (1989)

6. Australia is a party to the *Convention on the Rights of the Child (1989)*⁵ and the Bill raises the human rights obligations of the NSW Government⁶ and the Parliament, to children, individually and collectively, for the protection of their human rights, such as their right to education.⁷

7. International guidance on the interpretation and implementation of Treaty provisions such as the ICCPR and the *Convention on the Rights of the Child* are contained in the General Comments of Treaty Bodies. Primarily relevant are those of the Committee on the Rights of the Child. Other relevant guidance on the rights of children, and of parents in relation to children, has been issued by Treaty Bodies such as the Human Rights Committee for the ICCPR; the Committee for the International Convention of Economic, Social and Cultural Rights (ICESCR), amongst others.

8. Examination of the Bill's provisions against Australia's Treaty obligations and the likely risks and consequences of the Bill, demonstrate the Bill does not comply with the *Convention on the Rights of the Child* or guidance of the UN Treaty Bodies concerning children.⁸ Nor does it comply with the guidance of the Human Rights Committee on Article 18(4) ICCPR.⁹ Key concerns include, but are not limited to, those listed below.

9. The Bill particularly raises the *Convention on the Rights of the Child* (CRC)'s best interests of the child (Art. 3(1)); the education of the child (Art. 29); non-discrimination (Art. 2); self expression (Art. 13); privacy (Art. 16); freedom of information (Art. 17), and, the right to health (Art. 24).

10. The Treaties and related Treaty Body guidance establish that:

a) Children, individually and collectively, have fundamental human rights distinct from those of their parents or guardians;

b) Parents' right to provide guidance and direction of their children, includes providing this guidance according to the convictions held by their children, and not in accordance with their own convictions;¹⁰

⁵ Australia has also signed and/or ratified seven international human rights treaties including the International Convention on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of Persons with Disabilities, and some optional protocols to these treaties.

⁶ Treaties bind Australia overall, not just the Federal Government.

⁷ State/Territory governments are responsible for most aspects of primary and secondary education.

⁸ The Convention on the Rights of the Child defines a 'child' as someone under the age of 18 years.

⁹ UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, <https://www.refworld.org/docid/453883fb22.html>

¹⁰ Committee on the Rights of the Children General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

c) Children have a right to education,¹¹ including comprehensive sexual education, that develops them “to their fullest potential” and equips them for their future lives;¹²

d) Children have the right to complete and accurate health information concerning sex and gender.¹³ Censoring and withholding information, thereby leading to missing, inaccurate, misrepresentative or discriminatory information, related to sexual and reproductive health including gender¹⁴ contravenes children’s right to sexual and reproductive health, and their right to information.¹⁵

e) Unequal access by children to relevant sexual and reproductive health education and support services contravenes the right to non-discrimination in the provision of goods, facilities and services (CRC Art. 2) as well as the right to self expression (Art. 13(1)), and to privacy (Art. 16).^{16,17}

f) Signatories, such as Australia, have an obligation to ensure up-to-date, accurate information on sexual and reproductive health is publicly available, and that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education as part of their curricula without interference on moral or other grounds.¹⁸

g) Art. 3(1) of the CRC provides the child the right to have his/her best interests assessed and taken into account as a “primary consideration” in all actions or decisions that concern him/her, both in the public and private sphere, including by legislative bodies.¹⁹ The expression “primary consideration” means that the

¹¹ CRC Article 29(1)(a) states the purpose of education as the “development of the child’s personality, talents, and mental and physical abilities to their fullest potential”. Art. 29(1)(b)-(e) require development of the full potential of the child including respect for human rights, enhanced sense of identity and affiliation, and socialisation and interaction with others, and with the environment.

¹² General Comment 22 (2016) on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights para. 9.

¹³ CRC General comment No. 15 (2013) on the right to health (Art. 24); Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) para 11, on the right to the highest attainable standard of health (Article 12 International Covenant on Economic, Social and Cultural Rights), and General Comment No. 22 (2016) on the right to sexual and reproductive health (Art.12), para. 9.

¹⁴ Committee on the Rights of the Child, No. 15 para. 56.

¹⁵ Committee on the Rights of the Child General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24) CRC/C/GC/15

¹⁶ In 2017, the Human Rights Committee reiterated that the right to privacy covers gender identity (CCPR/C/119/D/2172/2012, para. 7.2).

¹⁷ See CRC above, CESCR general comment No. 6., and CEDAW: Art.10 States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure: (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education

¹⁸ CRC General Comment No. 15 para. 60, 63; Committee on Economic, Social and Cultural Rights General Comment No. 14 Violations of the obligation to respect, para 50, and, General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights para29; Committee on the Elimination of Discrimination against Women General Recommendation No. 30, para 52(c).

¹⁹ “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Convention on the Rights of the Child (Art. 3, para. 1)

child's best interests may not be considered on the same level as all other considerations, and, "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."²⁰

h) Assessment of a child's best interests must include the child's right to express his or her views freely and have due weight given to these views (Art. 12); the evolving capacities of the child (Art. 5); the child's identity including characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality, and, consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (Art. 19), sexual harassment, peer pressure, bullying, degrading treatment.²¹

i) Art. 12 of the CRC requires Member Countries to ensure children are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives, including at school.²²

11. Limitations on human rights must meet international human rights standards, such as Articles 4 and 19(3) of the ICCPR and Article 29(2) of the Universal Declaration of Human Rights. Under these standards, limitations must conform to the strict tests of legality, necessity and proportionality.

12. The Bill's provisions constrain the enjoyment by children of their human rights. They are contrary to international human rights law and neither necessary nor proportional. Alternate means exist for parents of the views underlying this Bill, to have their concerns met.

Other considerations:

13. Those affected by the Bill's provisions are children in the main, but also teachers and related staff such as counsellors.

14. The Bill proposes mandatory revocation of the "accreditation of teachers and other qualified persons" for teaching 'gender fluidity'.

15. These sanctions impede the free exchange of information. Staff and students throughout the education sector are entitled to academic freedom, meaning the freedom to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing without fear of punitive action or discrimination.²³

16. Human rights law enables Governments to integrate information or knowledge of a religious or philosophical kind in the school curriculum, provided it is conveyed in an objective, critical and pluralistic manner. In teaching a particular religion or philosophy,

²⁰ General comment No. 13 (2011) on the right to protection from all forms of violence, para. 61.

²¹ Ibid, General comment No. 13 (2011).

²² General comment, No. 12, para. 27.

²³ General Comment No. 13, the Committee on Economic, Social and Cultural Rights.

parents must be offered the possibility of either partially or fully exempting their children from such teaching.²⁴

17. While teachers are bound to teach in accordance with the established curriculum, sanctioning teachers for teaching a curriculum in line with international human rights standards is a disproportionate measure, and an undue infringement on their academic freedom and their right to freedom of expression which includes freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media of choice.²⁵

18. Of note, the European Court of Human Rights has determined that, as part of the right to education, parents have the right to respect for their religious and philosophical convictions, however, “the setting and planning of the curriculum fall in principle within the competence” of the Member Country.²⁶

19. In relation to ICCPR Article 18(4), which states:

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The relevant General Comment states (para 6):

The Committee is of the view that article 18 (4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18 (4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18 (1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

(For reference, Article 18(1) states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.)

Therefore, Art. 18(4) requires respect for parents’ right to the religious and moral education of their children that conforms with their own convictions. In public education, Art. 18(4) requires non-discriminatory exemptions or alternatives to public

²⁴ https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf

²⁵ Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)

²⁶ ECtHR, *Folgerø and Others v. Norway* [GC], No. 15472/02, 29 June 2007, para. 84.

education instruction “in a particular religion or belief”. It does not include prohibiting the teaching of material inconsistent with parents’ religion or beliefs; it requires the existence of alternatives. Put another way, Article 18(4) does not mandate the establishment of prohibitions or sanctions as proposed in the Parental Rights Bill.

20. Under the Convention of Economic, Social and Cultural Rights case law, sexual and reproductive health education must be part of the ordinary curriculum, and must “not perpetuate or reinforce social exclusion and the denial of human dignity”. Educational materials either by commission or omission, must not “reinforce demeaning stereotypes”, for instance of those of non-heterosexual orientation.²⁷

21. The term ‘gender’ has been used in scientific discourse and international human rights law since the 1970s. The General Comments of Treaty Bodies recognise the diversity in sex/gender such that physical presentation and behaviour is neither stereotypically female nor male.

22. The notion of a ‘sexual binary’ is scientifically, socially and educationally of questionable value in ensuring that children receive the education and information that equips them for their future lives.

23. Adolescents who are lesbian, gay, bisexual, transgender and intersex commonly face persecution, including abuse and violence, stigmatisation, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information.²⁸ In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness.^{29,30}

24. Difficulties in the school environment, for any student, can give rise to physical and mental health issues and can contribute to academic difficulties including higher absenteeism and dropping out.³¹

25. Effective comprehensive sexuality education enables children and young people to explore their attitudes and values, to raise issues, to develop media literacy skills for assessing media messages and imagery related to sexuality, relationships and gender, and to practise their decision-making, assertiveness and other skills needed for making informed choices about their relationships and sexual lives.³²

²⁷ https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf, p143.

²⁸ See statement dated 13 May 2015 by the Committee of the Rights of the Child, and other United Nations and regional human rights mechanisms, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E.

²⁹ Ibid.

³⁰ Goldfarb, E.S. and Lieberman, L.D. (2021) Three Decades of Research: The Case for Comprehensive Sex Education *Journal of Adolescent Health* 68 13-27, at <https://www.sciencedirect.com/science/article/pii/S1054139X20304560>

³¹ Goldfarb, E. S., and Lieberman, L. D. (2021) Three Decades of Research: The Case for Comprehensive Sex Education, *Journal of Adolescent Health*, Vol 68 pps 13-27; General Comment 1 (2001): The aims of education Article 29 (1) CRC/GC/2001/1, 17 April 2001

³² Mahieu, C. (2020) Cyber-flashing: How are young women (16-18 years) navigating image-based sexual abuse in the forms of unsolicited sexual imagery? MA Dissertation.

26. A recent review of 30 years of research on comprehensive sexual education provides strong support for comprehensive sex education.³³ The findings reveal that a broad definition of sexual health and well-being combined with positive and inclusive approaches to human sexuality taught across multiple grade levels, produce lower homophobia and homophobic-related bullying behaviours; increased understanding of gender and gender norms; improved knowledge and skills supporting healthy relationships; development of child sex abuse prevention skills, and reduced dating/intimate partner violence.

27. The review also found information based on single-gender and gender-binary interventions has the potential to misrepresent gender-nonconforming, nonbinary youth. Finally, the research review found substantial evidence that sexuality education is most effective when begun early and before sexual activity begins.

Recommendations:

28. The NSW Parliament Legislative Council Portfolio Committee No. 3 – Education:

1. Respond affirmatively to the call of the UN General Assembly on 12 November 2020 to signatories to the Convention on the Rights of the Child, to undertake all appropriate legislative, administrative and other measures to uphold or implement these rights;³⁴

2. Implement this commitment to the rights of the child and to their right to education, by ensuring:

a) The NSW Parliament implements Australia’s obligations under the Convention on the Rights of the Child in legislation, policies, decisions and services;

b) The Committee recommends that the Bill, as drafted, is put aside. If unanimous agreement is not reached, then a minority report to this effect should be included in or appended to the Committee Report.

³³ Goldfarb, E. S., and Lieberman, L. D. (2021) opcit.

³⁴ UN General Assembly, Resolution, 12 November 2020, A/C.3/75/L.16/Rev.1 at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N20/311/11/PDF/N2031111.pdf?OpenElement>