

**Submission
No 17**

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

Organisation: The Office of the Advocate for Children and Young People and
The Office of the Children's Guardian

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Joint Submission to the Inquiry into the Education Legislation Amendment (Parental Rights) Bill 2020

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Recommendations

Principal Recommendations

Recommendation 1: While this submission affirms and recognises parents' rights regarding the ethical, moral, social and spiritual development of their children, this submission recommends that amendments designed to reinforce parental primacy are not necessary. We note these rights are already reflected in the *Education Act 1990 (NSW)* (Education Act) through principles of parental responsibility outlined in Section 4(b), parental participation outlined in Section 6(1)(m), and secular instruction described in Section 30. We also note that these must be balanced with the evolving capacities of young people.

Recommendation 2: This submission recommends that schools should not be required to consult with parents about their core values at the beginning of each academic year and that schools should not be required to consider consultation in determining course content. We note that "matters of parental primacy" may impact a wide range of subject areas and that parents' diverse views could not all be equally accommodated. However, this submission supports the recommendation for schools to provide easy access to parents and students to understand the content of the syllabus.

Recommendation 3: This submission recommends that amendments allowing parents to remove their child from lessons that conflict with their core values are not adopted. We note that all course content taught at schools should be provided in a secular manner, as outlined by Section 30 of the Education Act. This submission also recommends that students be supported to process any emotional response to content that does not coincide with their core values, and that teachers are encouraged to recognise the validity of their response, which may be based on the core values of their parents, or their own core values. Schools should be a safe place where students are encouraged to consider different perspectives and learn to disagree in a safe, respectful way.

Recommendation 4: This submission recommends that amendments regarding prevention of instruction about gender fluidity are not adopted and that students are taught about different worldviews, social constructs, health and wellbeing in accordance with their age and developing maturity. This recommendation is based on both consultation with students in NSW and the United Nations Convention on the Rights of the Child.

Recommendation 5: In accordance with the above recommendations, we also recommend that teacher accreditation should not be tied to the proposed changes in this Bill, and that schools should not be required to undergo a review of compliance with parental primacy.

Secondary Recommendations

Noting the above reservations about the Bill overall, the following recommendations refer to specific schedules within the Bill and are secondary to the recommendation that the Bill is not passed.

Recommendation 6: Education Act 1990, Section 4(b)

This submission recommends that if the proposed addition to Section 4(b) is inserted that it be followed by the phrase "in accordance with the evolving capacity of the child".

Recommendation 7: Section 6(1)

This submission does not support the addition of Section 6(1)(o) due to the ambiguity of the term "consistent with" and difficulties in defining the parameters for parents' standards and values. This submission notes the sufficiency of Section 30 of the Education Act to ensure instruction is secular.

This submission affirms the proposed addition of Section 6(1)(p) and recommends including the phrase “and the rights of the child that are codified in Article 14 of the United Nations Convention on the Rights of the Child”.

Recommendation 8: Section 6(1A)(e)

This submission does not support the addition of Section 6(1A)(e) due to the ambiguity of the term “consistent with” and difficulties in defining the parameters for parental convictions.

Recommendation 9: Section 8(1)(e); Section 10(1)(d1); Section 12(1)(e)

This submission does not support the proposed additions and notes the importance of providing children and young people with access to the information they need for their own health and to understand and appreciate diversity in the world around them, in accordance with their age and maturity. This submission also notes this could lead to the failure of schools to acknowledge the emerging identities of transgender students and likely prevent them from learning about and expressing their identity during their schooling years.

Recommendation 10: Section 14(5)-(6)

This submission does not support the proposed additions, noting the likely difficulty in defining course content related to parental primacy, the likely breadth of impact, and the aforementioned concerns about preventing education related to gender fluidity.

Recommendation 11: Section 17A-17E

This submission does not support the proposed additions.

Regarding Section 17A, this submission notes the aforementioned concerns about preventing education related to gender fluidity.

Regarding Section 17B, this submission notes that these concerns are sufficiently addressed in Section 30 of the Education Act.

Regarding Section 17C, this submission notes concerns about young people accessing formal mental health support and informal emotional and social support structures they need.

Regarding Section 17D, this submission notes students’ expressed desire to access a secular education through which they learn about different perspectives to form their own worldview.

Regarding Section 17E, this submission refers to comments about inconsistencies between parents’ core values and the concern that consultation may pressure teachers to take a different approach.

Recommendation 12: Section 20A(2)(m1)

This submission does not support the proposed addition, noting concerns about parental primacy.

Recommendation 13: Section 27B

This submission does not support the proposed addition and notes that parents and students are able to raise concerns about non-secular or partisan teaching through the NESA website.

Recommendation 14: Section 30

This submission does not support the proposed addition and notes that the exclusion of discussions of gender fluidity is, in itself, taking a biased approach. Students in consultation around the Bill have

noted concerns about hearing biased views on sexuality and gender and would prefer to be presented with factual information, rather than hearing only the perspectives of their parents. They are seeking more information, rather than less, and feel that an omission of the experience of LGBTQIA+ students from the curriculum would be unbalanced.

Recommendation 15: Amendments to the *Education Standards Authority Act 2013 (NSW)*

This submission does not support the proposed amendments, noting above the concerns related to defining the parameters for parental primacy and the associated difficulty in regulating implementation of the proposed legislation. The submission again notes concerns related to discrimination against transgender students and students whose parents may be transgender.

Recommendation 16: Amendments to the *Teacher Accreditation Act 2004 (NSW)*

This submission does not support the proposed amendments, noting the concerns outlined above about changes to the Education Act and associated concerns linking those to teacher accreditation.

About the Children's Guardian

The Children's Guardian is an independent statutory office, established under the *Children's Guardian Act 2019 (NSW)*. The Office of the Children's Guardian (OCG) works to protect the safety of children by supporting and regulating quality child safe organisations and services. The wellbeing and safety of children and young people is at the heart of all our efforts. We are a source of authority on quality in child safe practice. We regulate the out-of-home care sector and administer the Working With Children Check and reportable conduct schemes. We are also responsible for progressing key preventative recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse and are currently working on draft legislation to regulate the Child Safe Standards in child-related organisations in NSW, including in schools.

About the Advocate for Children and Young People

The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, well-being and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Under the *Advocate for Children and Young People Act 2014*, the functions of ACYP include:

- making recommendations to Parliament, and government and non-government agencies on legislation, policies, practices and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people; and

- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of-government Strategic Plan for Children and Young People (the Plan).

Further information about ACYP’s work can be found at: www.acyp.nsw.gov.au

Introduction

The Advocate for Children and Young People (ACYP) and the Office of the Children’s Guardian (OCG) are grateful for the opportunity to make a joint submission to the Committee regarding the Education Legislation Amendment (Parental Rights) Bill. We agree that children’s rights and children’s voices should be central in the decision-making processes that impact their lives, particularly their education and health.

This submission reflects consultation that ACYP has conducted with young people in NSW about the content and impact of the Bill on their lives. It also includes observations and comments from ACYP and OCG about how the proposals set out in the Bill relate to existing legislation, the Child Safe Standards, and the United Nations Convention on the Rights of the Child.

Consultation methodology

In preparation for this submission, ACYP canvassed the views of high school students through focus groups and provided an opportunity for the Youth Advisory Council to submit feedback. The young people involved were given a summary of the Bill and asked to provide comments on what they thought the impact would be for students. In total, the views of n=44 young people were captured. This included:

- Four focus groups were held in Government high schools, two in a regional area, and two in a metropolitan school. These groups canvassed the views of a total of n=35 students. One of the focus groups held in the regional area was with young people who attend a support group for LGBTQIA+ students. The other group was drawn from a Year 10 class and did not include any young people in this support group. The two metropolitan groups included students from a Year 8 class.
- The Youth Advisory Council is comprised of 12 young people across NSW aged 14-24. Nine members submitted a response.
- ACYP has also drawn on previous consultations where related issues have been raised.

As this was a qualitative rather than quantitative consultation, the views of participants should be taken to reflect the various opinions held by young people in NSW but are not a statistical representation of how widespread those views are (for example, we cannot say 80% of students felt one way and 20% felt another way). Comparisons of how many students held a particular view should be considered indicative only. That said, the sample size and composition is in line with research industry standards to understand how young people feel about this bill. For the sake of clarity and to indicate how prevalent a view was within this study, this submission has used “a few” to refer to approximately two to four young people, “some” to refer to five to ten young people, and “many” to refer to more than ten young people.

Quotes in this document have been included verbatim but spelling has been corrected as required.

What children and young people had to say

On parental primacy

Overall, students did not want parents' core values to determine the content of their education at school, they did not feel it was appropriate for students to be taken out of classes and felt that, if anything, children and young people should be the ones to decide if the content of a lesson is inappropriate and to remove themselves if the content causes distress.

Many students expressed concern that the views of parents might dictate the information they learn at school. Students felt that a public education should deliver them an unbiased view of different topics with a broad range of perspectives and should not be driven by any agenda. This is consistent with the intent of the Bill that teaching in schools remain non-ideological, and with the Education Act under Section 30 which provides that education in government schools is to be 'non-sectarian and secular'.

"It's important for students to learn the facts about our society. If we go into the society not knowing or even thinking that a certain thing is just not normal or strange, then we're not going to really understand anything new that's coming up. So, I think we should be taught by facts. No opinion should be given to students that will influence them, but yes, it's important to learn the facts about society."

Students felt the information presented by teachers should be balanced but felt their parents would be likely to present a biased view on topics and that parents may not be as well informed as teachers about the different perspectives of an issue. For instance, they felt that omitting a discussion of gender fluidity would itself be a biased approach.

Students also noted that their own opinions differed from their parents and they wanted access to all of the potential perspectives in order to form their own views.

"I think it's important to shape your own world at a young age, instead of being influenced by your parents saying, 'you can't learn about this'."

"Our aim as humans should be to encourage empathy and we do that through understanding different views and lived experiences, whether or not they correspond with that of your own."

They pointed to generational changes in worldview and felt that while it was important to listen to parents, sometimes a child's views would differ.

"[Parents] teach you your core values and beliefs and what not, but I feel like then again, even though we all argue with our parents, we all have different opinions to our parents, whether that's generation or you know just base of opinion."

"No one really has the exact same opinions and ideas and beliefs as their parents, because we are entirely different generations."

Students noted that core values could be broad and presenting information in a 'manner consistent with the convictions of parents' (proposed Section 6(1A)(e)) may impact any subject from literature to science. This submission notes that parental primacy has been defined as relating to moral and ethical standards, political and social values and matters of wellbeing and identity, however, these standards, values and matters themselves have not been clearly defined. Such a definition would be difficult to properly delineate, noting the diversity of Australian culture and changes in values over

time. Students also spoke to this concern during consultation and raised various examples where a parent's core values could prevent the child from accessing information they felt was important for their general education. Examples included beliefs about vaccinations, evolution, safe sex, or whether the earth was flat. In particular, students felt it was important that they would be able to access information related to their own health and how their bodies work and were concerned that parents may be able to prevent them from learning that information.

"I also feel like the law is maybe too vague. It's like "you can stop anything". I feel like there is some core fundamental things that no matter what, some things you need to learn... stuff about your body, like fundamentally, it's super important."

Some participants supported the proposed amendment for schools to conduct annual consultations with parents as a means of shaping course content. Many felt that parents had a right to know what their children were learning about at school and supported efforts to make this clear, particularly when the child is in primary school. However, many did not feel parents had the right to decide what was or was not taught and were eager to ensure the syllabus remained free of bias, noting parents' conflicting views.

Some students did consider there were contexts where they could understand a parent wanting to remove their child from a lesson, with the example that some parents with strong religious beliefs might have special requirements. However, these views were also tempered by concerns about the parameters for parents to make this decision and upon reflection, most who had raised the idea of objection on religious grounds later decided parents should not be able to remove their child from a lesson.

"I think it really depends on the situation, so like for example, like taking a child out of class because it goes against their religious beliefs, like Muslim people, like that I guess is fine, because that is like a core part of view, but like what if parents take their kids out of lessons about vaccinations for example, which are like really important like for a child's wellbeing?"

This consideration was particularly prominent in one of the metropolitan groups who felt that parents of primary school children should have the right to remove the child from class if the child agreed. However, when asked specifically if parents should have the right to remove their child from a class discussing gender fluidity if they disagreed with the content, the students responded quickly and passionately, asserting that they should not.

"Definitely not."

"100% not."

Some students asserted that parents could choose to enrol their child in a religious school if their religious beliefs raised concerns about how content was taught at a government school. They did not feel the parent had a right to dictate the content at a government school.

"If you want to give your kid a Catholic upbringing, you will send them to a Catholic school."

Students across the board, however, felt that the child or young person should be able to remove themselves from a class if the content of the lesson caused emotional distress or disagreed with their core values. They believed that the child's core values should be taken into account and could imagine that some students may not be comfortable in certain classes. Examples included students

whose families were involved in the Holocaust, content that conflicts with strong religious beliefs, a student who has mental illness discussing that mental illness in class, or an Aboriginal student hearing about the history of British colonisation.

“I feel like there should be a law where it’s just a child’s opinion what they are learning.”

The abovementioned metropolitan group who felt a primary school child’s parents might remove a child from class with the child’s consent were also more positive about a child or young person’s right to remove themselves from class, particularly in high school. When this group were asked if the child or young person should be able to remove themselves from a class on gender fluidity if they disagree, views were mixed but participants felt that students should either not be allowed to remove themselves or should be encouraged by the teacher to stay in the class.

“If they really don’t want to learn about it, I think it’s their choice, but teachers should be able to suggest that they should stay in.”

“I think they kind of should learn about it because even if they don’t want to, it’s a part of life today and you have to learn to be accepting of people who are that.”

“This subject is not like math. So, if it was like that, they could just say ‘I don’t want to learn about math’ and then they can just be taken out. But this is not a choice, because people should learn to normalise sexualities.”

On gender fluidity

All of the young people consulted about the Bill except for one felt that teachers should be able to speak about gender fluidity in schools, and beyond that, that it should be included in the syllabus as an important part of their education. The one young person who disagreed felt that it was not a priority for schools and that it was a topic that could be dealt with by parents in the home.

Young people felt that rather than banning teaching about gender fluidity, it should be encouraged. They felt any current mentions of same-sex attraction and gender fluidity were not in depth and did not provide them with the information they wanted to know. This view was held both by students who identified as being part of the LGBTQIA+ community, and those who did not.

“We get told trans and gay people exist and that’s it. We don’t get taught anything else, so I think that could be better, what being a trans person is and how that works... any experiences they delve into with straight people, they should do the same for gay and trans people.”

Across the consultation, young people noted that it is important for all children and young people to learn about their bodies, sexuality, health and relationships. Students who had identified as LGBTQIA+ noted that this information was essential for them in their development. They pointed to a need to understand how to engage in sexual activity in a safe way, in the same way that those who do not identify as LGBTQIA+ need to learn about heterosexual relationships.

Students also noted that it was important for young people to have a safe space to seek information related to gender and sex, and that it was not always easy to speak to their parents about those issues – either because they had different views than their parents, or simply because their relationship with their parents was not open to discuss these topics. They felt that this Bill would limit their education and their ability to access the information they needed. This perspective was also raised by students in other groups.

“If you have no one to talk to like a teacher, and you only have friends - who may not get it or may not understand - or parents who are bigoted or wouldn’t understand, and it’s scary, even knowing you have accepting parents, to just straight up - and when you are trying to still figure yourself out to just talk to them about it. Not many teenagers like talking to their parents about anything, so only having that option is really damaging and can lead to people going to unsafe spaces.”

Students in the LGBTQIA+ support group noted it was common for young people to turn to the internet when they did not receive information at school. However, they noted they did not feel seeking information online was safe for them and described the information available as inappropriate and extremely explicit.

“Each year more and more people, children are coming out as transgender, you need to be educated in the right way, rather than having to go to forums, such as like Reddit or Twitter and gain extremely explicit help which is not, like I said before, not the best for a child.”

When the group was asked if they felt this was a pervasive issue, they agreed and said it was widespread in their communities. Some offered that they themselves had been in this situation and had felt uncomfortable or guilty after seeking information online. They also noted that these spaces were sometimes occupied by people they recognised as exhibiting predatory behaviour. These students hoped, instead, that they would find the information they needed through classes and through speaking to trusted teachers and school counsellors.

“A child shouldn’t be feeling guilty about having to access knowledge that they should have anyway.”

A common theme across all consultations was that instruction about LGBTQIA+ issues in schools should be an equal focus to heterosexual issues and take an approach of normalisation. Students spoke passionately about the idea that LGBTQIA+ identities were just as natural as non-LGBTQIA+ identities and that these should not be singled out or othered.

“I don’t think it should be pointed out as a weird or different from everyone else, I think it should be talked about as like a normal relationship, instead of people like making like a big emphasis on it, as if it’s like this weird unnatural thing.”

Some students noted that they wanted more information about LGBTQIA+ issues and were eager to learn, even though it did not pertain to them personally. They noted it was important for all young people to learn about these issues. They felt this would help society become more inclusive and would help them to understand their peers more. They noted that teachers and school administrators should encourage students to be accepting and inclusive of others, while they felt this Bill would exclude transgender students. Students in both schools noted that bullying was an issue in their school and that they had other friends – not in the room – who had experienced bullying and exclusion after coming out as transgender.

“I think people need to understand how it works, because lots of us, we wouldn’t understand why you have those feelings and wanting to do that kind of stuff, but if you teach children why that happens, then they’ll understand it and then you can be like “oh

okay, I get why they chose to do that”, but like even I don’t know why they choose that or how they do that.”¹

“Like with puberty, we are taught about male and female. I think that we should be taught about the changes between that, and if you’re changing gender, the things that are involved with that.”

Students noted that as adolescence is a key stage of life in developing identity, that providing this information to all young people might help someone understand their own identity. Some noted that without information, young people may be afraid to establish their own identity which is likely to lead to poor mental and physical health outcomes.

The young people in the support group discussed the need to use pronouns that matched their gender identity. They noted that the concept of “preferred pronouns” was inaccurate as they did not feel it should be a choice for others about whether or not their identity was recognised. They also expressed frustration that the government, through this Bill, might try to limit their self-expression.

“The government doesn’t get to choose my identity.”

“It needs to be taught. [The Bill] is erasing an already vulnerable group of people. It will further alienate trans students (who already go through social difficulties as it is). I can’t even tell you how much I wish that there was education around gender and gender fluidity when I was in school, it would have saved me 10+ years of pain and suffering. I never even knew why I felt that certain way nor did I have the language to communicate it to others.”

When presented with the proposal that non-teaching staff, including counsellors, would also not be able to teach students about concepts of gender fluidity, all students who were interviewed expressed concern for the mental health of transgender students. Again, they noted that without access to mental health support through school, young people would be dependent on their parents who may not be willing to assist them to access a mental health practitioner. Without this access, young people expected transgender students to experience poor mental health outcomes.

“If you wanted to see someone externally like a therapist, that’s just a whole other work, because you have to book appointments, you have to pay and then if you have Medicare you have to go through that whole process and overall, you still have to have your parents’ permission”.²

“It’s also like stopping their help, so where are they going to go. Their parents don’t believe what they believe and the counsellor can’t talk about it, their teacher can’t talk about it, then they will feel very much on their own and that then isn’t just a problem in your head, but also it affects your mental health and that can lead to other problems.”

“Students should feel safe and open when they’re at school, especially with the counsellors because that’s their job - to help students when they’re not feeling decent mentally.”

¹ ACYP notes that the student was expressing their desire to understand transgender issues better. The ACYP recognises that the experiences of transgender students is not a matter of choice.

² ACYP notes that while parental permission may not be required for some young people to access mental health support, in practice, the young person likely faces barriers that are best overcome with parental support such as understanding the medical system, transport and finances.

Child rights and current legislation

The United Nations Convention on the Rights of the Child (UNCRC) asserts that children (being those under the age of 18) have a right to preserve their identity (Article 8), a right to express their views (Article 12) including the right to seek and share information about their views (Article 13), and the right to freedom of thought, conscience and religion (Article 14).³

For a transgender student, these rights might be exercised in the context of school through expressing their gender in physical appearance, clothing, the use of gendered or non-gendered pronouns and the informal use of a name that matches their developing identity. Further, seeking information about gender as a construct is relevant to all students, as they continue to make sense of the world around them. This is not limited to an understanding of LGBTQIA+ issues but also a way to understand traditional gender norms and roles.

The United Nations Committee on the Rights of the Child produced a general comment on implementation of the rights of the child during adolescence, which argued that adolescence was an important time for children to develop and explore their identity and that the rights and duties of parents to provide direction to the child (Article 14) are balanced with the child's capacity to develop their identity and their right to self-expression:

*The obligation of parents and caregivers to provide appropriate guidance in accordance with the evolving capacities of adolescents should not interfere with adolescents' right to freedom of expression.*⁴

While this Bill affirms the obligations and rights of parents to support their children in developing their identity and providing instruction in core values and beliefs, it does not recognise the right of the child or young person to develop their own identity and core beliefs through accessing balanced, factual information through the provision of a State education.

The Committee also addressed the particular vulnerabilities of LGBTQIA+ students.

Adolescents who are lesbian, gay, bisexual, transgender and intersex commonly face persecution, including abuse and violence, stigmatization, 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.

The Committee emphasizes the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.

The Committee also noted that States should be actively pursuing opportunities to protect these students by raising awareness of the issues they face.

³ United Nations Convention on the Rights of the Child
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁴ United Nations Committee on the Rights of the Child, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*.

States should also take effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.

This Bill would prevent staff at schools from recognising the legitimacy of the transgender experience and would limit an understanding of gender to being solely equivalent to biological sex. Excluding discussion of gender fluidity from schools would prevent students from expressing their identity but may also lead to continued discrimination, including ongoing bullying and violence both inside and outside of the school community.

The Education Act affirms in Section 6 that education in NSW should encourage diversity in schools (Section 6(1)(c)), should mitigate any educational disadvantage arising from gender (Section 6(1)(e)), and should develop students intellectually, morally and socially in their capacity to work with others and their respect for the cultural diversity of Australian society (Section 6(1A)(b)). This Bill would cause schools not to recognise the diverse gender identities of students and their parents and would lead to disadvantages for transgender and non-binary students in accessing their education.

A child's right to an education is outlined in Articles 28 and 29 of the UNCRC, noting that it should be accessible to all. Allowing parents to remove their children from classes that conflict with their core values will likely prevent those children from accessing information about important topics, prevent the child from understanding the worldview of others and developing their own. Inclusion in these classes would not detract from or undermine the parent's right to instruct their child in terms of moral and ethical development but would present alternative ideas in a secular manner.

Notably, the UNCRC states that education should be to help the child to develop respect for their parents and their own cultural identity, language and values, as well as the values of the country they live in and others' values.⁵ The article goes on to note that education is for:

*The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.*⁶

Allowing parents to remove the child from classes would prevent the child from developing a fuller understanding and tolerance of others' values and cultures.

Article 24 of the UNCRC outlines a child's right to healthcare and notes that "States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services".⁷ While this submission recognises that the school is not the primary source of healthcare for young people, the presence of school counsellors, nurses and other support staff is, in practice, a central mechanism for health support. As noted earlier in this submission, where the student may not have the support of a parent to access mental healthcare outside of the school system, the school counsellor and other supports are integral to their access to healthcare. Preventing these staff members from providing information about gender fluidity would prevent young people who may be transgender or questioning their identity from finding the answers and support they need.

⁵ United Nations Convention on the Rights of the Child, Article 29.

⁶ United Nations Convention on the Rights of the Child, Article 29 Subsection 1(d).

⁷ United Nations Convention on the Rights of the Child, Article 24.

Child Safe Standards

Royal Commission recommendations/Standard 4 rationale

The Royal Commission into Institutional Responses to Child Sexual Abuse made a number of recommendations designed to improve the safety of children in organisations. Key among those are that child related organisations be required to implement Child Safe Standards and be held accountable for their implementation through independent oversight.

Together, the Child Safe Standards “articulate the essential standards of a child safe institution” and “guide what institutions need to do to be child safe by setting best practice to drive and guide performance.” The Standards are holistic and overlap with each other, however Standard 4 – equity is upheld and diverse needs are taken into account – is of particular relevance to this inquiry.

Evidence and research from the Royal Commission indicated that particular key issues need to be considered in relation to equity and diverse needs of children in organisational environments. It concluded that “child safe institutions should pay attention to ... the experiences of lesbian, gay, bisexual, transgender and intersex children.”⁸ In reaching this conclusion, the Commission acknowledged that for organisations to create child safe cultures, they need to ensure that they are inclusive for all children and young people. In the LGBTQIA+ context, this means that organisations should be cognisant of the particular vulnerabilities of this cohort, and ensure that their policies, procedures, practices and culture are responsive and sensitive to their needs.

Children’s Guardian Amendment (Child Safe Scheme) Bill 2021

The NSW Government accepted the Royal Commission’s recommendations to make organisations child safe and the Child Safe Standards. The OCG has been consulting extensively with government and non-government stakeholders since mid-2018 on the Standards and their implementation. Stakeholders have consistently indicated strong support for the Royal Commission’s ten child safe standards, as well for a responsive, risk based regulatory regime, that is founded on building organisational capability to be child safe.

Conclusion

Young people do not support the passage of this Bill. At the close of the consultation sessions, students were asked to respond to the following questions.

1. In your opinion, should schools, teachers and counsellors be able to speak with students about gender fluidity? No/ Yes (Please circle).
2. What is the main reason you feel this way?

Every student who participated in the consultation answered yes to the first question. They do not agree that discussions of gender fluidity should be prevented in schools. Among the YAC members who submitted a response, all but one felt that schools should be able to teach about gender fluidity.

⁸ Royal Commission into Institutional Responses to Child Sexual Abuse: Making institutions Child Safe https://clan.org.au/wp-content/uploads/2020/12/final_report_-_volume_6_making_institutions_child_safe.pdf

Based on their responses and the arguments laid out in terms of the Child Safe Standards and the UNCRC, this submission does not support this Bill. In their words:

“Education and knowledge is the first step to acceptance. If you are limiting that you are creating a safe space for transphobes and bigots, and an unsafe space for trans/questioning kids.”

“It should be common knowledge; it would help end bigotry towards LGBTQIA+ [people]. It's related to our mental health and identity.”

“It's core [to a] sense of identity, adolescent years are important in learning about themselves, and we shouldn't be restricted from it especially if you cannot [be] open to family.”

“If you take away the ability for students to talk to counsellors then where can the child go? There is nobody easily available for them to talk to. If you take away the ability for teachers to talk about fluidity where is the student going to learn about it?”

“I believe it is morally wrong to suppress students' ability to discuss concepts that have to do with their self-identity in a safe environment.”

“I feel this way because I understand how without this, children will suffer and in extreme cases could do self-harm.”

“I feel like this because I might want to go to talk to someone at school (e.g. counsellor) about gender fluidity. I just don't think the Bill should pass.”

“I feel they should definitely be able to speak about it because everyone should have the right to learn about it. If someone is gender fluid they will have someone to go to and talk to.”

“I think it is important to have conversations or to know facts about gender fluidity. I think that no opinions should be shared. Only facts should be shared to students.”

“I think that denying a student the option to talk to someone about something [they] are going through is wrong. This Bill is just so wrong in my opinion. Whoever wrote this bill clearly hasn't heard opinions of students....at least not yet. Thank you for speaking for us :)”

ACYP and OCG thank the Committee for considering these important issues and welcome any follow up questions from its members. Should you have any further comments or questions, please do not hesitate to contact ACYP offices

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