

Submission
No 24

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

Organisation: Independent Education Union of Australia NSW/ACT Branch

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Hon Mark Latham MLC
Chair, Portfolio Committee No. 3 – Education
Upper House Committees | Legislative Council
Parliament of New South Wales

Dear Mr Latham

Please find below the submission from the Independent Education Union of Australia NSW/ACT Branch to the Portfolio Committee No. 3 inquiry into the Education Legislation Amendment (Parental Rights) Bill 2020.

I can confirm that we agree to our submission being published in full on the parliamentary website, including the full name of our Union, *Independent Education Union of Australia NSW/ACT Branch*.

Yours sincerely

MARK NORTHAM
Secretary

By email: portfoliocommittee3@parliament.nsw.gov.au

Portfolio Committee No. 3 inquiry into the Education Legislation Amendment (Parental Rights) Bill 2020

Independent Education Union of Australia NSW/ACT Branch response

The Independent Education Union of Australia NSW/ACT Branch (IEU) represents more than 33,000 teachers and support staff in non-government schools, the early childhood sector, and ELICOS centres.

The IEU rejects the Education Legislation Amendment (Parental Rights) Bill 2020 in its entirety as an unwarranted and ill-conceived attack on the professionalism of teachers and the rights of children. The Bill indicates little knowledge or understanding of how schools function on a day-to-day basis. The IEU believes implementing such a Bill has the potential to cause significant harm to individual students and teachers.

As the inquiry has no detailed terms of reference, our response will address areas in which we believe the proposed Bill is inadequate or will have an adverse impact.

“Gender fluidity”

The IEU can see no widespread need for, or public support of, prohibitive legislation such as the proposed Bill. On the contrary, our experience is that there is an increasing level of concern from educators and the medical profession as to how best to support students experiencing diverse gender identity in schools. The IEU also contends that the rushed and restricted nature of the process accompanying this proposed legislation is concerning.

The definitions section of the proposed Bill asserts that gender fluidity is a “belief” suggesting it is a matter of personal or subjective opinion rather than one which can be determined objectively. While much work remains to be done on the question of gender diversity, there is an increasing body of scientific evidence that puts the phenomenon itself beyond serious doubt, a fact this Bill ignores.

The dismissive assertion that gender fluidity is merely a “belief” trivialises the lived experience of the many young people who are dealing with this situation either in their personal life or by association with a member of their family or school community. The deliberate attempt to prevent school staff from providing appropriate support for these vulnerable students through this restrictive and punitive legislation is unconscionable.

The Bill specifically states that it seeks to “prohibit the teaching of gender fluidity in all schools”. The IEU believes this statement is, at best, misleading. The IEU is unaware of any schools that ‘teach’ gender fluidity, nor any syllabus documents which explicitly refer to gender fluidity. Schools and systems may provide training for staff to allow them to better understand the complex issues associated with gender identity, however, any professional development courses in this area of which we are aware aim to provide teachers with the knowledge and skills to support the students in their care.

It is widely appreciated that students with diverse gender identity may also face a range of other challenges, including mental health concerns, bullying and harassment, and family and domestic violence issues. This Bill presupposes that all students enjoy a high level of support and understanding in their home environment. It is the experience of our members that this is not always the case, with many of our most at-risk young people looking to the adults in their school community and other care providers for the support that is not available to them at home.

Professional obligations of teachers

The Bill is also in direct conflict with the Mandatory Reporting obligations of teachers in NSW. The *Children and Young Persons (Care and Protection) Act 1998* obligates teachers to report a risk of significant harm to children and young people which includes the risk of psychological harm.

Improvements to child protection regimes post the *Royal Commission into Institutional Responses into Child Sexual Abuse* are also problematic for this Bill. In particular, Standard 4 of the *National Child Safeguarding Standards* arising from the Commission's recommendations, commit teachers to equity and inclusive practice towards lesbian, gay, bisexual, transgender, and intersex children and young people. The Bill as proposed would make it difficult, if not impossible, for school communities to comply with this standard.

The heavy-handed nature of the proposed Bill means that, not only would already vulnerable students be put at further risk, but that any attempt by teachers to appropriately support them and carry out their duty of care as required by law, would place teachers in contravention of this Bill, exposing them to unnecessary legal risk.

Rights of the child

The proposed Bill is also an affront against the rights of the Child as articulated in the *UN Convention on the Rights of the Child*, to which Australia is a signatory. Children and young people have a legitimate expectation that these rights will not be weakened or transgressed by domestic law.

Parental primacy

The primacy of parents is already an integral part of education in Australia. This is especially so in many of the faith-based schools with which the IEU deals. The very existence of independent schools is testimony to society's recognition of, and respect for, these rights. To assert, however, that parental rights have an absolute primacy superior to all other rights such as those enjoyed by children and young people themselves is contrary to established legal principle. Parental rights, like most rights, are exercised within a broad framework of rights that balance the shared interests of parents, young people, and the broader community.

Schools already take significant steps to ensure parents are suitably informed as to the nature and timing of any potentially challenging content that is programmed to be taught throughout the year. Teaching programs, however, are not immutable and are often adjusted throughout the year in response to changing circumstances, not least the needs of the young people involved. For this we rely, as we have always done, on the professional judgement of the teacher.

It is entirely unreasonable to expect that teachers could and should present, at the start of a school year, a detailed account of the content that will be taught throughout any given year. It is offensive to the teaching profession to suggest that these unnecessary work intensification practices should be enshrined into this legislation.

In the day-to-day functioning of a school, it is entirely common practice for teachers to deal with all manner of issues in an impromptu manner, especially when students raise questions that are pertinent to their current life experience. To propose that IEU members should risk losing their teacher accreditation for appropriately responding to questions as they arise, around gender, sexuality, or moral and ethical standards, is totally unacceptable. We can think of no other profession that would accept the bureaucratic interference articulated in this proposed Bill.

Concluding remarks

The IEU asserts that schools are at their best when school communities work together. This Bill threatens to pit parents against teachers, and parents against each other. Rather than supporting our teachers to teach and support young people in their care, this Bill will ensure that teachers' energies are diverted to resolving conflicts between parents, and potentially between the parents and their own child, who hold differing and irreconcilable social, religious, political, moral, and ethical views.

While our discussion has focused on attacks on teacher professionalism and the rights of the child, the IEU is concerned that this Bill carries the potential to expand the reach of parental rights further than its immediate and intended targets. If parental rights are to reach into the pastoral and curriculum responsibilities of schools, what is to prevent these same rights being exercised to interfere in the teaching of subjects that are considered controversial by minority parental points of view such as medical vaccinations, evolution, indigenous history, and the holocaust?

The IEU rejects this proposed Bill as a crude attempt to legislate a jaundiced minority world view. The IUE contends that, if there is a moral imperative in dealing with diverse gender identity, it necessarily revolves around the fundamental human rights of the students who are living the experience, and for whom the issue is very real. The IEU contends that any discussion as to how gender identity should be addressed in schools is best led by education professionals and health experts.

End of submission