

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

Organisation: Australian Education Union New South Wales Teachers
Federation Branch

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**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

SUBMISSION TO

Parliamentary Committee 3 Legislative Council

ON

**Inquiry into the Education Legislation Amendment (Parental Rights)
Bill 2020**

Authorised by

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AEU NSW Teachers Federation**

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The Australian Education Union NSW Teachers Federation Branch (Federation) represents teachers in all public education workplaces in NSW. The current financial membership totals over 60,000 practicing teachers.

This proposed amendment bill will directly affect our members in NSW public schools and preschools, the curriculum that they teach and the welfare of their students and colleagues.

At the outset, the Federation wishes to state that this bill has the potential to cause harm to students, teachers and the broader community. It is wholly related to the working conditions of our members as it calls for systemic change in the provision of education in NSW. This proposed bill would have a significant impact on the working conditions, workload and wellbeing of our members.

For these reasons, further detailed in this submission, Federation urges the Parliamentary Committee to stand against this harmful bill, and reconsider ways that the NSW Government can give support to all students and their families by strengthening the NSW Public Education system.

It is important to note that the second reading speech expressed a criticism of academics, advisors and the Federation for their submissions to inquiries. The Federation represents the majority of teachers in NSW Public Schools and given how powerfully this bill will threaten their employment and working conditions, it is essential that this submission is considered duly.

The Federation supports secular public education and has campaigned for many years to ensure that our students are not manipulated for political or ideological agendas. Every student deserves access to a high-quality public education, regardless of gender, socioeconomic status, religion, language background or any other facet of their diverse identities and backgrounds.

Breadth of Definitions

The definitions that are being proposed in this bill are inherently problematic and the application of these new terms to ban teaching of certain concepts in NSW Schools poses a threat to the mental health of students and teachers while simultaneously impacting on the neutrality of education in NSW.

Gender fluidity

This definition is broad enough to encompass wholly or partially the experiences of transgender, intersex and gender diverse people. It defines the understanding of gender diversity and the acceptance of LGBTIQ+ identities as ideological. Gender diversity is enshrined in Australian sex discrimination law and International human rights law.

The media release for this proposed bill claims that "the rights of transgender students to support and wellbeing in schools will not be affected by the Bill." However, in order to acknowledge the validity of transgender people, one must understand that a person's gender can be different to the biological sex designated to them at birth. Therefore, this definition alone affects the rights of transgender, intersex and gender diverse young people.

The definition of gender fluidity in this bill undermines the definition of gender identity from the *Sex Discrimination Act 1984* (Cth), which indicates that a person's designated sex at birth may be different to their gender identity. While the definition in this bill uses the term 'human gender' rather than 'gender identity', this bill aims to legislate that teachers must not teach that a person's gender identity and their biological sex can be different. This bill would prevent Legal

Studies teachers from teaching students about the *Sex Discrimination Act 1984* (Cth), and it would impact upon the rights of students, teachers and the community to be free from sex discrimination.

This definition also includes a problematic parenthetical regarding biological sex, which indicates that only chromosomes dictate whether a person is male or female, with some people born with a 'disorder of sexual differentiation'. This language characterises intersex people as disordered and limits the understanding of biological sex to chromosomal indicators.

Matters of Parental Primacy

In law and in practice, parents are already considered to have primary responsibility over the education of a child, and it is the responsibility of the state to provide public education so that every child can receive an education of the highest quality. This is laid out in the principles on which the *Education Act 1990* (NSW) is based: section 4 (b) reads: "the education of a child is primarily the responsibility of the child's parents."

The scope of specific topics which could be considered "moral and ethical standards, political and social values, and matters of personal wellbeing and identity including gender and sexuality" is so large that this proposed amendment does not add more specific detail than the current bill.

Additionally, section 26 of the *Education Act 1990* (NSW) currently makes the provision for a parent of a child to seek a certificate exempting their child from attending classes related to a part of a course if they have a conscientious objection on religious grounds. Therefore, not only are parents primarily responsible for the education of their child, but they can also withdraw their children from classes where they oppose the content of the syllabus based on religious concerns.

Further, in NSW Public Schools the *Controversial Issues in Schools Policy* requires that principals:

"provide the option for parents or carers to withdraw their child from activities addressing controversial issues where appropriate in accordance with their professional judgement."¹

Therefore, in NSW Public Schools, parents already enjoy and exercise their right to withdraw children from classes where appropriate.

Parental consultation

The media release for this inquiry describes that "the Bill aims to restore the rights of parents in NSW schools by ensuring they are fully consulted and aware of what's being taught in the classrooms of their children."²

Syllabus and Content

Teachers in NSW Public Schools teach from the NSW Syllabuses as published by NESA. These are public documents available online and in paper copy through NESA. Syllabus development is a rigorous process, as syllabuses are written by expert teachers with a range of

¹ <https://policies.education.nsw.gov.au/policy-library/policies/controversial-issues-in-schools>

² [https://www.parliament.nsw.gov.au/lcdocs/other/14022/Media%20Release%20-%20Education%20Amendment%20\(Parental%20Rights\)%20Bill%202020%20-%20Establishment%20-%20January%202021.pdf](https://www.parliament.nsw.gov.au/lcdocs/other/14022/Media%20Release%20-%20Education%20Amendment%20(Parental%20Rights)%20Bill%202020%20-%20Establishment%20-%20January%202021.pdf)

experience and reviewed by the profession and relevant stakeholders before their implementation.

While the content of all courses is published in syllabuses and made available to parents, this bill requires that NESA create resource packs specifying content which may be a matter of parental primacy so that schools can distribute this to parents. Given the breadth of the definition of 'matters of parental primacy' in this proposed bill, any component of the syllabus may fit this description, and requiring NESA to specify content that fits into the description is unnecessary. Within the Education Act, NESA is already charged with providing advice and assistance to students and the public concerning the nature and content of courses of study. This, coupled with the Act's provision for parents to seek a certificate of exemption, means that parents are already informed and given the opportunity to apply for exemption from parts of a course of study.

In order to engage parents in further consultation than already occurs, teachers and schools would need to make available to them the entire teaching programs that are worked from and edited throughout the year. Teachers teach the syllabus, but the specific learning activities and the rate at which outcomes are addressed varies throughout the year as teachers reflect on their students' needs and abilities. A teaching program published at the beginning of a term or year is a working document and should change throughout the year as teachers and schools reflect upon the needs of their students and adjust their teaching strategies accordingly. Additionally, when unforeseen situations occur - such as a local tragedy, natural disaster or pandemic - programs are adjusted to meet the new time demands and any wellbeing or learning needs of students that have changed due to this upheaval.

Professional teaching standards

This bill specifically requires that the professional teaching standards must set out that training and accreditation for teachers includes the concept of parental primacy and precludes the teaching of 'gender fluidity'. While this is intended to ensure that teachers do not implement ideologies into their teaching, the Act already states that the teaching standards may deal with the ethical conduct of teachers. This bill only serves to marginalise gender diverse communities.

One key tool that NESA uses to oversee the training and accreditation of teachers is the Australian Professional Standards for Teachers – against which teachers:

- are assessed during their initial teacher education,
- are accredited during their application as a proficient, highly accomplished or lead teacher,
- reflect during their ongoing training and maintenance of accreditation,
- in NSW Public Schools set Professional Goals in their Performance and Development cycle.

These standards require, among other things, that teachers “meet professional ethics and responsibilities” (standard 7.1) and “engage with parents/carers” (standard 7.3).

Collaborating with parents is recognised as best practice for the wellbeing and academic success of students. Teachers do this through individual consultation, Parent and Citizens Association meetings, and school-based systems. Increasingly, technology has given our teachers a range of opportunities to engage parents through online classroom platforms.

Teachers have a range of professional ethics and responsibilities that are prescribed through system policies and codes. In NSW Public Schools, teachers are held accountable to documents such as the Code of Conduct and a range of Departmental Policies. This bill's

attempt to replicate teachers' current responsibilities is unnecessary, and its aim to specifically exclude the teaching of gender diversity is discriminatory.

Treatment of controversial issues

The Department's *Controversial Issues in Schools Policy* outlines that teaching such issues should "allow students to explore a range of viewpoints and not advance the interest of any particular group."³ Where teachers are required to teach content which is controversial due to its political or discriminatory nature, this policy contains guidelines to ensure that NSW Public Schools remain neutral places for study.

This policy also allows for different views to be treated fairly and with respect, and protects students, staff and community members from discrimination:

"Parents, carers and students may hold different views. These views should be treated in a respectful manner. Expressing a view which may result in harassment, vilification and/or discrimination is not a right."⁴

The current policies regarding the teaching of political and ethical content already make clear the responsibilities of those working in education to avoid political, religious, or ideological purposes in teaching. The specific focus on 'gender fluidity' within this bill serves to teach a specific ideology and to marginalise gender diverse people by banning the teaching of gender identity as distinct from biological sex.

While it may seem easy to confine gender identity to a topic in PDHPE and Science Syllabuses, like many other topics which can be seen as controversial it has relevance to many syllabuses. For example: author/artist and audience contexts in English and Creative and Performing Arts; and Civil Rights movements in history. To ignore gender identity as distinct from biological sex in many of these topics would be a disservice to students who would not understand the demographics and paradigms of the world around them.

Article 18 International Covenant on Civil and Political Rights

The second reading speech stated that this bill would enshrine article 18 of the International Covenant on Civil and Political Rights into NSW law. This speech made reference only to point 4 of this article, provided below is the entire article for reference:

"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.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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.

³ <https://policies.education.nsw.gov.au/policy-library/policies/controversial-issues-in-schools>

⁴ <https://policies.education.nsw.gov.au/policy-library/policies/controversial-issues-in-schools>

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.”

This bill in its current form extends respect for the liberty described in point 4 to the detriment of the fundamental rights and freedoms of people whose gender identity is different to their biological sex – contrary to point 3 of this article. The existing Acts enshrine the freedom of parents to seek exemption based on conscientious objection and allow parents access to the syllabus to understand what is taught in schools. To ban what is described in this bill as ‘gender fluidity’ from being taught in schools on the basis of this article is contradictory to the notion of protecting civil rights and freedoms.

Wellbeing of students, teachers and the community.

While the media statement for this bill claims that “The rights of transgender students to support and wellbeing in schools will not be affected by the Bill,” the bill has several impacts upon students’ wellbeing, including the wellbeing of students who are transgender, intersex or gender diverse. This will also impact upon teachers and other community members, particularly those who are not cisgender men or women.

Counselling services

Writing Themselves In 4 is a survey regarding The Health and Wellbeing of LGBTQA+ Young People in Australia. It provides a range of data which indicates that, overall, LGBTQA+ youth have higher rates of mental ill-health than the general population. The survey specifically makes the comparison that 59.1% of 16-17 year-old participants who identified as LGBTQA+ had experienced suicidal ideation in the past 12 months, in comparison to 11.2% in the general population of 16-17 year-old people.⁵

One of the Premier’s priorities is to reduce the rate of suicides in NSW.⁶ A students’ gender identity is one of the risk factors that a school counsellor will observe when determining risk for a student presenting with suicidality – due to statistics such as those above. This proposed bill would prohibit school counsellors from teaching students that gender identity may be distinct from biological sex. This prevents school counsellors from identifying gender dysphoria or validating a students’ gender identity during counselling if it does not match their biological sex – especially in cases where a student is not yet comfortable discussing this with their parents/carers.

Prior to 2019, school counsellors were not required to be registered with the Psychology Board of Australia (PBA), though many were registered regardless. Since the beginning of the 2020 Schools Award⁷, new school counsellors are required to be registered with the Psychology Board of Australia, and existing counsellors who are not yet registered but are eligible for registration have been encouraged to do so. Most school counsellors are therefore bound by the legislation and ethical guidelines applicable to psychologists, parts of which are contradicted in this bill.

⁵ https://www.latrobe.edu.au/_data/assets/pdf_file/0010/1198945/Writing-Themselves-In-4-National-report.pdf
p. 16

⁶ <https://www.nsw.gov.au/premiers-priorities/towards-zero-suicides>

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<http://www.lawlink.nsw.gov.au/irc/ircgazette.nsf/LUPublications/9699B81A9B7A7DEFC25856C0024D4AF?OpenDocument>

While school counsellors do not provide therapy for transgender students, they play a role in helping a school to be aware of how to accommodate for and validate a students' gender identity. This includes liaising with families, health care providers, staff and other students. The importance of informed affirmation, validation and representation for the mental wellbeing of transgender and gender diverse students cannot be overstated.

Representation and understanding

This bill forbids, in NSW schools, the acknowledgement that a person's sex and their gender or gender expression may be different to one another, and that a person may not identify as either male or female in their gender.

One of the findings of the *Writing Themselves in 4*⁸ survey was that the youth surveyed valued "being affirmed by others" – that is, having their identity recognised through direct affirmation or by being represented in the world around them. If this bill were to prevent teaching material that validates transgender, intersex or gender diverse experiences, this would be removing valuable support for these students, and it would be limiting the scope of the world for all students in the classroom.

Students who are not taught about the validity of transgender, non-binary or intersex experiences at school may also go into the broader community lacking a significant piece of knowledge to support them socially. They may be unprepared to enter the workforce and understand the experiences of their clients, customers or colleagues.

Where transphobic or other discriminatory bullying occurs in schools, this bill will also prevent teachers, school counsellors and other school staff from providing effective mediation and behavior management. If school communities are not permitted to discuss gender diversity, then they cannot address discrimination in this context. This will cause schools to breach Australian sex discrimination law.

While this legislation would cause trauma and anguish for LGBTIQ+ people, it would not remove them from society. It is important that our students understand the world that they live in and how other people's identities may be different to their own.

The Yogyakarta Principles

This bill undermines the *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, in particular the rights to equality and non-discrimination, recognition before the law, and education. *The Yogyakarta Principles* highlight that "Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom."⁹ By disallowing teachers from affirming a student's gender identity if it does not match their biological sex, this bill will be in contravention of this principle.

These principles also outline that "Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity."¹⁰ to achieve this, States are obliged not only to not discriminate on the basis of gender identity, but also to ensure that education serves to enhance people's understanding of and respect for diverse

⁸ https://www.latrobe.edu.au/_data/assets/pdf_file/0010/1198945/Writing-Themselves-In-4-National-report.pdf

⁹ <https://yogyakartaprinciples.org/principle-3/>

¹⁰ <https://yogyakartaprinciples.org/principle-16/>

gender identities. This bill will make this impossible, as any gender identities that fit the definition of 'gender fluidity' in this bill will be banned from curricula and teaching methods.

Conclusion

Teachers recognise that positive relationships and consultation with parents is best practice. Parents are primarily responsible for the education of their children. This is already reflected in education legislation. This bill does not support our parents in any meaningful way to exercise their rights and responsibilities in their children's education.

This bill does discriminate against and marginalise our vulnerable LGBTIQA+ students. It does not provide the opportunity for these students to be affirmed and recognised in their classrooms safely. It also prevents all students from a robust and complete education that prepares them to be active citizens. It threatens the employment of teachers who would support the wellbeing of their students.

Federation appreciates the opportunity to provide this submission regarding this bill and urges the Parliamentary Committee to consider these points and reject this bill based on the fact that it is unnecessary, unworkable and it does not support our students.