

Submission  
No 32

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

**Organisation:** Catholic Education Diocese of Parramatta

**Date Received:** 26 February 2021

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**SUBMISSION**  
**EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020 (BILL)**  
**26 FEBRUARY 2021**

1. Catholic Education Diocese of Parramatta (CEDP) makes this submission to the Legislative Council's Portfolio Committee No.3 - Education about the *Education Legislation Amendment (Parental Rights) Bill 2020* (Bill).

**INTRODUCTION**

2. Catholic Education Diocese of Parramatta (CEDP) is a system of 80 faith-based schools in Western Sydney and the Blue Mountains. CEDP educates over 43,000 students and employs almost 5,000 staff.
3. CEDP is committed to responding to the needs of all students. CEDP collaborates with parents, students and staff, to realise the mission of bringing the person of Jesus Christ into the lives of the young people in its care and their families.
4. CEDP opposes the Bill which represents an unacceptable incursion into the professional judgement of Catholic schools and school systems. As an education provider schooling one in four students in Western Sydney, CEDP is trusted by local families to make appropriate discernments regarding sensitive matters in student learning.
5. In this submission CEDP does not describe all the reasons that the Bill's provisions are objectionable. Rather, we focus on the serious deleterious effects of the Bill's provisions on:
  - 5.1. the rights and wellbeing of students and staff, and
  - 5.2. teaching and learning.

**RIGHTS AND WELLBEING OF STUDENTS**

6. Catholic education nourishes the whole person - cognitive, affective, physical, social, ethical and spiritual - encouraging every student to develop their talents in an environment of solidarity. Learning happens best with a caring, respectful culture that celebrates every student's achievement and individuality.

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7. There is no evidence to show that the concept of “parental primacy” introduced by the Bill is necessary. The sound balancing of two key principles already underpinning the *Education Act 1900* (NSW) (Education Act) that *education is primarily the responsibility of the child’s parents* (s.4(b)) and *every child has the right to receive an education* (s.4(a)) is occurring every day in NSW schools. CEDP is committed to the Catholic understanding that parents are the primary educators of their children in matters of faith<sup>1</sup> and education.
8. CEDP supports the goals of the *Melbourne Declaration on Educational Goals for Young Australians*<sup>2</sup> and the subsequent *Alice Springs (Mparntwe) Education Declaration*<sup>3</sup>. The *Melbourne Declaration* goals are:

*Goal 1: Australian schooling promotes equity and excellence*<sup>4</sup>

*Goal 2: All young Australians become successful learners, confident and creative individuals and active and informed citizens*<sup>5</sup>

The vision for the *Alice Springs (Mparntwe) Education Declaration* is

“...for a world class education system that encourages and supports every student to be the very best they can be, no matter where they live or what kind of learning challenges they may face.”<sup>6</sup>

CEDP also accepts that achieving these goals and realising the vision is the *collective responsibility of governments, school sectors and individual schools as well as parents and carers, young Australians, families, other education and training providers, business and the broader community*<sup>7</sup>.

<sup>1</sup> The Sacred Congregation for Catholic Education. (1982). *Lay Catholics In Schools: Witnesses To Faith*. Vatican City. 15 October, cl.12. Retrieved on 22 February 2021 from [http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_19821015\\_lay-catholics\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19821015_lay-catholics_en.html)

<sup>2</sup> Ministerial Council on Education, Employment, Training and Youth Affairs. (2008). *Melbourne Declaration on Educational Goals for Young Australians*. Retrieved on 23 February 2021 from [http://www.curriculum.edu.au/verve/\\_resources/National\\_Declaration\\_on\\_the\\_Educational\\_Goals\\_for\\_Young\\_Australians.pdf](http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf)

<sup>3</sup> Education Council. (2019). *Alice Springs (Mparntwe) Education Declaration*. [This Declaration was made by all Australian Education Ministers].

<sup>4</sup> *Supra*. Note 2. p.7

<sup>5</sup> *Ibid*. p.8

<sup>6</sup> *Supra*. Note 3. p.3.

<sup>7</sup> *Supra*. Note 2. p.7

9. The concept of “parental primacy” is akin to “parents rights” and this concept has long been discarded in Australia.<sup>8</sup> In addition to the Education Act, Federal and State legislation embeds the concepts of parental responsibilities and children’s rights and the latter have primacy. It should never be the case that children’s rights become subservient to an overarching concept of “parental primacy”.
10. In the objects for administration of the Education Act in s.6, the Bill adds three further objects:

“(a) provision of an education that is consistent with the principles in section 4”,

“(o) provision of an education that is consistent with the moral and ethical standards and the political and social values of parents of students”, and

“(p) provision of an education that reflects the rights of parents that are codified in Article 18(4) of the International Covenant on Civil and Political Rights.

**Note:** Article 18(4) of the International Covenant on Civil and Political Rights states “*The State 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*”.

11. Proposed section 6(p) and the Note following incorrectly attributes Article 18(4) of the *International Covenant on Civil and Political Rights*<sup>9</sup> (ICCPR) as giving parents “rights”. Rather, Article 18(4) emphasises respect for parents and in the context of the ICCPR “liberty” is about the positive enjoyment of social, political or economic rights and privileges. To understand what positive enjoyment means must be read in conjunction with other competing relevant Articles of the ICCPR and other international agreements, including the *International Convention on the Rights of the Child* (CRC)<sup>10</sup>, all of which the Bill glaringly fails to mention or consider.
12. Relevant Articles ICCPR are:

<sup>8</sup> Eg. *Family Law Act 1975 (Cth)*; *Children and Young Persons (Care and Protection) Act 1998* (NSW); *Children (Protection and Parental Responsibility) Act 1997* (NSW).

<sup>9</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p.1. Retrieved on 23 February 2021 from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en)

<sup>10</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3. Retrieved on 23 February 2021 from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en)

- 12.1. 10(1) *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
- 12.2. 24(1) *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
- 12.3. 26 *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
13. Parents in NSW already have the liberty to send their children to a range of schools that accord with their moral and religious convictions. This is exactly what parents of over 43,000 students in CEDP Catholic schools are doing. Additional legislative provisions advocating for this liberty are redundant and divisive.
14. Australia is not only a party to the CRC but has ratified it. Consequently, both Federal and State governments have positive obligations to ensure they comply with the CRC provisions and relevantly<sup>11</sup>:
- 14.1. Article 2(1): *State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
- 14.2. Article 3(1): *in all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3(1))*
- 14.3. Article 3(2): *State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for*

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<sup>11</sup> *Ibid*

*him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

14.4. Article 8(1): *State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without lawful interference.*

14.5. Article 12(1): *State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

14.6. Article 13:

*(1): The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form or art, or through any other media of the child's choice*

*(2): The exercise of this right may be subject to certain restrictions, but these shall only be such as provided by law and are necessary:*

*(a) For respect of the rights or reputations of others; or*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

14.7. Article 14:

*(1) State Parties shall respect the right of the child to freedom of thought, conscience and religion.*

*(2) States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*

14.8. Article 17: *States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the*

*promotion of his or her social, spiritual and moral well-being and physical and mental health...*

- 14.9. Article 19(1): *State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian(s) or any other person who has the care of the child.*
- 14.10. Article 28 (1): *State Parties recognise the right of the child to education...*
- 14.11. Article 29 (1)(a):
1. *States Parties agree that the education of the child shall be directed to:*
    - (a) *The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
    - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
    - (c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
    - (d) *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;*
    - (e) *The development of respect for the natural environment.*
15. It is incumbent that the Education Act and corresponding legislation ensure the fundamental and universal principle that the best interests of children are the primary consideration and that their rights are protected as required in the above CRC provisions. Wherever those factors are inconsistent with a parent's "rights and duties" the former must prevail. The Bill not only fails in this regard but conspicuously and deliberately ignores these rights and actively detracts from them.
16. CEDP is underpinned by a commitment to inclusion and the promotion of the human dignity of all. Prohibitions on what can be discussed within the learning process can

stigmatise these matters and people whose life experiences are connected to them. This Bill is counter to promoting and respecting the human dignity of all. Any students who feel vulnerable whether by sex, gender, culture or other circumstances and lack acknowledgement and recognition of their identity and/or appreciation of their circumstances will feel excluded and isolated. The social, health and academic effects of such experiences on students, including LGBTQI students, are well known and researched. They are likely to be subjected to further discrimination and harassment.

17. The Bill proposes that its provisions about parental primacy and gender fluidity will apply to any student who receives “teaching, instruction, counselling and advice” that is provided by teachers, school executives, counsellors and a range of non-school based staff, contractors, advisors, consultants and volunteers at school. This is short sighted and lacking insight into a school’s duty of care and student needs.

### TEACHING AND LEARNING

18. CEDP recognises the family as each child’s most influential educator and actively partners with parents and caregivers, encouraging open communications and supportive learning environments. We work in partnership with parents and carers to provide holistic education programs for our students.
19. Catholic educators are called to accompany students from diverse backgrounds in dialogue with different perspectives.<sup>12</sup> CEDP is committed to experiential learning through inquiry where dialogue promotes deep learning. This dialogue and discussion is inhibited when limitations are placed on what can or cannot be discussed. CEDP is concerned about drawing in a new category of “parental primacy” that could lead to the interpretation of a range of matters that cannot be discussed within learning.
20. The Bill defines “matters of parental primacy” as “in relation to the education of children, moral and ethical standards, political and social values, and matters of personal wellbeing and identity including gender and sexuality”. It again refers to these concepts in an additional object proposed in the Education Act of “provision of an education that is consistent with the moral and ethical standards and the political and social values of

<sup>12</sup> Congregation for Catholic Education (for Institutes of Study). (2013). *Educating to Intercultural Dialogue in Catholic Schools. Living in Harmony for a Civilization of Love*. Vatican City. 28 October, cls. 61-63 Retrieved on 22 February 2021 from [https://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20131028\\_dialogo-interculturale\\_en.html](https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20131028_dialogo-interculturale_en.html)



parents of students”. These are very subjective values and what may be regarded as a particular value by one group or individual may not be by another.

21. Religious and cultural diversity are opportunities for meaningful dialogue and discussion in the classroom. For Catholic schools, teachers are therefore well equipped to teach Catholic beliefs and teachings in a manner that is inclusive of and respectful of diversity. Prohibiting topics of dialogue and discussion would diminish this capacity.
22. A key dimension of the NSW education curriculum is the fundamental belief that students need to engage with a broad range of ideas, contexts and values to better understand themselves and their world. As a result of their schooling, students are expected to have the general capabilities that “encompass the knowledge, skills, attitudes and behaviours to assist students to live and work successfully in the 21st century.”<sup>13</sup> These include critical and creative thinking, ethical understanding, intercultural understanding and personal and social capability as well as the traditional capabilities such as literacy, numeracy and digital literacy.<sup>14</sup>
23. To exercise and develop these skills, learners must engage with a broad range of experiences, ideas and contexts. This concept underpins each of the syllabus documents and is reflected explicitly in the syllabus rationales in every subject area (e.g. History, Mathematics, Geography, Science, PDHPE and beyond). The Bill’s proposed amendments to the Education Act require the parts of a syllabus to indicate where content relates to parental primacy (proposed new ss.14(5)-(6)). Whilst content relating to “parental primacy” in syllabuses is not prohibited by the Bill’s proposals, the effect will be for NESA and non-government schools to limit the matters that are likely to fall within this area in order to avoid the ramifications of including it, thereby significantly detracting from the quality of student learning.
24. To highlight just one subject area, English, a subject that is taught to every student, every year throughout K-12, it would be almost impossible for an English teacher in NSW to teach the English syllabus without engaging in values discussions. The Bill’s proposed amendments will mean that the guiding principles in the rationale for the English syllabus could no longer apply and the engagement with canonical texts would also be prohibited. For example Shakespearean favourites *Twelfth Night*, *As You Like It*

<sup>13</sup> NSW Education Standards Authority. *Learning across the curriculum*. Kindergarten -Year 10 - Learning Areas - English - English K-10. Retrieved on 23 February 2021 from <https://educationstandards.nsw.edu.au/wps/portal/nesa/k-10/learning-areas/english-year-10/english-k-10/learning-across-the-curriculum>

<sup>14</sup> Ibid.

and *Merchant of Venice* would no longer be able to feature on prescribed text lists if teachers were prohibited from discussing issues of values as defined in “parental primacy” and gender fluidity if it arises in the context of student questions and discussion. While this is only one subject that has been highlighted and one particular group of teachers, this same exercise could be undertaken for a range of different discipline areas. This censorious approach is incompatible with intellectual values.

25. The current rationale of for the English syllabus includes:

*Knowledge, understanding, skills, values and attitudes acquired in English are central to the learning and development of students in NSW. Developing proficiency in English enables students to take their place as confident communicators, critical and imaginative thinkers, lifelong learners and informed, active participants in Australian society. It supports the development and expression of a system of personal values, based on students’ understanding of moral and ethical matters, and gives expression to their hopes and ideals.*<sup>15</sup>

The proposed Bill does not reflect this rationale.

26. The precise and exacting judgement calls teachers will need to make about what is a value within a matter of “parental primacy”, how they should or not deal with it in student learning and consulting and managing very different parental perspectives will be incredibly demanding, incessant, highly conflictual and stressful and place them in a precarious position. The ramifications of this will inevitably flow into the classroom and detract from student learning as teachers avoid teaching anything at all that might fall in this category.
27. Further, parents in public schools could demand their child be removed from a classroom lesson if they believe the lesson will cover matters within their parental primacy with which they oppose (proposed s.17D). Rather than improving relationships with parents, it will breach the deep relationship of trust between parents and teachers. It will be extraordinarily disruptive in classrooms. It is very likely to have the opposite effect to what is intended by the proposals, by isolating and highlighting a student whose parents disagree with the lesson content. It will diminish their sense of belonging and

<sup>15</sup> NSW Education Standards Authority. *Rationale*. Kindergarten -Year 10 - Learning Areas - English - English K-10. Retrieved on 24 February 2021 from <https://educationstandards.nsw.edu.au/wps/portal/nesa/k-10/learning-areas/english-year-10/english-k-10/rationale>

learning with their peers. It could trigger harassment and bullying by students who have not been excluded.

28. Similarly, where issues of gender and difference are raised by students separately or in the context of their studies and discussion, the draconian provisions of the Bill will inhibit teachers (including counsellors and non-teaching staff) ability to make the nuanced professional judgement decisions and employ the professional skills they always have to ensure that not only do all students feel acknowledged, included, supported, respected, but to also flourish in their learning and achieve the very best they can (academically and in other ways). The Bill demonstrates a complete lack of understanding of what teaching and learning entails.
29. Teachers are professionally trained to engage students in a meaningful and fulfilling learning journey through school. The proposals in the Bill are not only detrimental to student learning, they are demeaning to the highly qualified and skilled professionals in the NSW education system. It is possible that teachers and other professionals may exit the education system as their continued roles in student learning and support will no longer be tenable, professionally or for their own wellbeing.
30. These issues are exacerbated by the draconian proposed amendment to the *Teacher Accreditation Act 2004 (NSW)* to make it a “condition of accreditation of teachers that they must recognise that parents are responsible for education of children in “matters of parental primacy” and that they must not teach “gender fluidity” in schools (new s.21(1A(b)). It further provides that NESA must revoke the accreditation of persons who have failed to comply with any of these requirements under the professional teaching standards (new s.21(2)). The effect will be to compromise the Teacher Accreditation and employment possibilities (ie. could not teach in any school) of countless teachers across NSW.
31. In addition, if the Bill is enacted, it will have a harsh impact on public schools by the inclusion of specific requirements for publication on their websites about matters of parental primacy for every course, to consult with parents of students about instruction in matters of primacy (proposed s.17E) and compliance monitoring of these requirements and the prohibition on teaching gender fluidity (proposed s.27B)
32. The impractical nature of the requirements that the Bill would impose on systems of schools and education authorities like NESA, will render the implementation of what is

proposed here impossible. Further, it would require significant resources to be focused away from learning and teaching.

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