

Submission
No 35

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

Organisation: Human Rights Law Alliance

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Portfolio Committee No. 3 – Education
Parliament of New South Wales (**NSW**)

BY E-MAIL:

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Dear members of the Portfolio Committee,

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

1. We set out below our submission to the Portfolio Committee’s current inquiry in relation to the *Education Legislation Amendment (Parental Rights) Bill 2020 (NSW) (Bill)*.

HRLA

2. The Human Rights Law Alliance (**HRLA**) is Australia’s only human rights law firm that specialises in the areas of freedom of religion, thought, speech, and conscience. HRLA regularly provides legal assistance to Australians who face unfair treatment because of their faith.
3. HRLA also provides advice in respect of existing and proposed legislation across Australia that have implications for fundamental freedoms of religion, thought, speech and conscience.

SUMMARY OF SUBMISSIONS

4. HRLA strongly supports this Bill. The Bill addresses key flaws in the existing NSW education system such as:
 - 4.1 Parents have prime responsibility for instruction of their children in moral and ethical virtues. This is recognised in international bills of rights and treaties but poorly reflected in NSW education laws. The Bill will bring NSW education laws into line with international standards.
 - 4.2 NSW teacher training, course development and teaching content in government schools includes dogmatic and polemical ideology on social and moral issues. In many cases, teachers are encouraged to actively promote radical ideology rather than teaching children about a full a range of moral, ethical and political positions.
 - 4.3 Teaching on radical ideology undermines education. It is not in the best interests of any child. Indoctrination into radical theories on moral, ethical and political issues is not necessary to educate children, or to support diversity, tolerance and inclusion. Indoctrination is incongruous with an education system that should support every child, no matter the family that they come from.

- 4.4 Indoctrination on contemporary social topics in NSW education deprives children in public schools from hearing a full range of perspectives on important issues. Teachers should be free to discuss the full range of views that reflect those of society and parents when providing education on moral, ethical and political issues.
5. HRLA considers that the draft provisions in the Bill are appropriately drafted and balanced, although some minor amendments may be helpful to enhance the utility of the Bill. These amendments are set out in the substance of our submission below.
6. However, HRLA would support the Bill being passed in its current form, even if these possible amendments are not adopted.

SUBSTANCE OF HRLA SUBMISSION

7. HRLA's submissions address the following matters:
 - 7.1 the need to introduce legislation such as the Bill to protect parental rights;
 - 7.2 the consistency of the Bill with international human rights instruments; and
 - 7.3 analysis of the Bill and possible amendments that could be made.

There Is A Clear Need For The Bill

8. There is a clear need to introduce a bill to protect parental rights in respect of matters of parental primacy and to prohibit the teaching of gender fluidity ideology.
9. The NSW government banned the teaching of the Safe Schools program in NSW on the basis that it was inappropriate teaching on moral, ethical and political matters, which involved indoctrination into gender fluidity ideology. As was noted in the Second Reading Speech of the Bill¹, the Minister for Education and Early Childhood Learning has made it clear that it is the job of parents, not schools, to instil their children with moral, ethical and political values.
10. The banning of the Safe Schools program did not end the teaching of gender fluidity in NSW schools or prevent teacher training, curriculum development or teaching in the classroom from including ideological indoctrination.
11. Such teaching on moral, ethical and social issues is still prevalent in NSW schools. Such instruction teaches radical theory as fact and fails to present all perspectives on important social issues, often excluding the social and moral convictions held by the parents of children who send those children to government schools to get a non-ideological education.
12. There are also indications in a final report released on 23 June 2020 in respect of the NSW Curriculum Review (**Report**)² that schools, even if well-intentioned, may be effectively seeking to

¹ See <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-82416>.

² See https://nswcurriculumreview.nesa.nsw.edu.au/pdfs/phase-3/final-report/NSW_Curriculum_Review_Final_Report.pdf.

usurp the rights of parents in relation to core values and take a lead role in developing values and character in their students through the curriculum.

12.1 Page 4 of the Report states that:

“With the decline of other institutions – sometimes including families – that once played a lead role in inculcating values and developing character, schools have found it increasingly necessary to give priority to students’ social and emotional development, and often to their physical and mental safety, health and wellbeing. This raises a question about the scope of the school curriculum...”

12.2 Page 27 of the Report states that:

“There was a view [from parents] that it should be more difficult for governments to add social issues of these kinds to the school curriculum and workload of schools. Some [parents] suggested that schools and teachers should ‘push back’ on expectations that they address issues better addressed by parents, allied health professionals or other organisations.”

13. Parents clearly want government schools to educate their children, not indoctrinate those children on moral, ethical and political issues. The Second Reading Speech of the Bill details many examples of where teachers are being trained to indoctrinate, not educate. The passing of the Bill may help to address the falling standards of education in NSW by giving effect to parents’ wishes that schools focus on core education obligations and pull back from indoctrination of students.
14. Parental rights are currently sparsely covered by the Education Act. Section 4(b) of the *Education Act 1990* (NSW) recognises that parents are primarily responsible for the education of their children. Sections 25 and 26 of the Education Act provide rights for parents to home school or to exempt their children from classes on religious grounds. This is scant protection. Ultimately, none of the existing provisions expressly:
 - 14.1 ensure that schools work collaboratively with parents to the extent that curriculum includes teaching on moral, ethical and political issues to ensure that children are exposed to a wide variety of perspectives and outlooks;
 - 14.2 protect parental rights in respect of matters of parental primacy, despite these matters being enshrined and protected under various international laws (discussed below); or
 - 14.3 prohibit the teaching of ideology that is inconsistent with the moral and ethical virtues of the parents of the children.
15. The proposed Bill will fill a vital gap in expressly addressing these matters and will bring NSW education laws into line with Australia’s international human rights obligations.

The Bill Is Consistent With Fundamental Human Rights

16. Currently, NSW education laws are out of step with international law. The Bill will bring NSW education law into alignment with Australia’s obligations under human rights treaties and covenants which reflect the primary responsibility of parents for education of their children.

17. The Bill is consistent with various rights and freedoms under the *International Covenant on Civil and Political Rights (ICCPR)*:
- 17.1 **Article 17**: This Article provides that families have the right not to be interfered with arbitrarily. The Bill is consistent with this Article, as it seeks to ensure that schools do not usurp the role of parents in relation to the teaching of core values.
- 17.2 **Article 18(4)**: This Article provides that parties to the Covenant undertake “to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”. The Bill is clearly consistent with this Article, as it seeks to clarify that parents (and not schools) are primarily responsible for the development and formation of their children in relation to core values such as moral standards. It also practically implements mechanisms by which teaching in relation to core values must not be inconsistent with the values of parents.
- 17.3 **Article 23(1)**: This Article provides that the family “is the natural and fundamental group unit of society and is entitled to protection by society and the State”. Again, the Bill is clearly consistent with this Article, as it protects the rights of families and parents in respect of the development and formation of children.
18. The Bill aligns with fundamental rights set out in the United Nations *Universal Declaration of Human Rights (UDHR)*:
- 18.1 **Article 16(3)**: Article 16(3) of the UDHR declares that the family is the natural and fundamental group unit of society and is entitled to protection by the society and state. The Bill will give parents greater recognition as primarily responsible for the development and formation of their children.
- 18.2 **Article 19**: This Article protects the right to freedom of opinion and expression, and includes the right to hold opinions without interference and to seek, receive and impart information. By prohibiting indoctrination and ensuring non-ideological education, the Bill gives effect to this Article.
- 18.3 **Article 26(3)**: This Article provides that parents have a prior right to choose the kind of education that shall be given to their children. The Bill recognises parents’ rights in respect of matters of parental primacy and aligns well with Article 26(3).
19. The Bill is also consistent with the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Declaration)*. For example, Article 5(2) provides that:
- “Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.”

20. The Bill is clearly consistent with this Article, as it provides for the education of children in conformity with the core values and wishes of parents. It also allows parents to withdraw students from instruction of core values where parents object to particular teaching.
21. Further, the Bill is also consistent with the United Nations *Convention on the Rights of the Child*. For example:
 - 21.1 The preamble to the Convention recognises that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”
 - 21.2 **Article 5:** This Article provides that States Parties “shall respect the responsibilities, rights and duties of parents”. The Bill is consistent with this Article, as it seeks to respect the rights of parents in relation to matters of parental primacy.
 - 21.3 **Article 14:** This Article provides that “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.” The Bill is consistent with this Article, as it provides for parents to be primarily responsible for the development and formation of their children in relation to core values.
22. Overall, it is clear that the Bill is consistent with numerous international documents that define fundamental human rights. A universally recognised right is the right of parents to be primarily responsible for the development and formation of their children. The Bill preserves and protects many fundamental rights and freedoms contained in international law in respect of parents, families, children and education.
23. The Bill is not only commendable in this regard, but also helpful. It is appropriate for the Bill to have objects and provisions which protect and advance these rights and freedoms in NSW.

Analysis of the Bill

24. Overall, we consider that the provisions in the Bill are appropriately drafted and balanced. Except as set out below, HRLA considers that the provisions are well suited to achieving the Bill’s designated objects.
25. The Bill is an omnibus bill that amends the *Education Act 1990* (**Education Act**), the *Education Standards Authority Act 2013* (**NESA Act**) and the *Teacher Accreditation Act 2004* (**Teacher Act**). We consider the proposed changes to each of these statutes in turn.

Education Act

26. **Definitions.** The Bill adds definitions of “*gender fluidity*” and “*matters of parental primacy*” to section 3 of the Education Act. These definitions are central to achieving the aims and objects of the Bill.
27. The definition of “*gender fluidity*” appropriately identifies that this is a “*belief*” that is not the subject of scientific consensus but is a radical theory. Like all beliefs, any education in respect of sex and gender should not teach such belief as a fact or indoctrinate children into gender fluidity.

28. The reference to “intersex” in the definition of “*gender fluidity*” appears to be medically precise – all intersex persons are either male or female depending on the presence or absence of a Y chromosome – but the word “disorder” (while medically appropriate) could be replaced with “conditions” as critics of the Bill could suggest that the use of the medical word “disorder” is pejorative towards persons who have “intersex” attributes.
29. The definition of “matters of parental primacy” properly incorporates those issues on which parents have primary authority in education as recognised by international fundamental rights documents (see above). HRLA considers that this is a good definition.
30. The Bill amends section 4 (Principles) and section 6 (Objects) of the Education Act to insert new principles and objects that recognise parental primacy in education on moral, ethical and political matters. These proposed amendments are appropriate and provide important recognition of parental rights and responsibilities for their children’s education even where that education is being carried out in a school.
31. **Teaching gender fluidity.** Part 3 of the Education Act is amended to ban the teaching of gender fluidity in primary education curriculum (section 8), secondary education (section 10) and higher school certificate courses (section 12).
32. This is reinforced in proposed section 14(6) which bans the inclusion of gender fluidity in a syllabus, section 17A which sets out a general prohibition on any school teaching gender fluidity (government or non-government) and an inclusion in section 30 of the Act that requires secular instruction (which includes a prohibition on teaching gender fluidity).
33. As gender fluidity is defined as a “belief” it is appropriate that the Bill provides that this should not be taught – i.e. presented to students as fact. Questions may be raised about the appropriateness of specifically prohibiting the teaching of gender fluidity and giving this particular belief legislative prohibition. This could be considered disproportionate given that many other radical theories do not also receive the same prohibition.
34. However, explicit prohibition on the teaching of gender fluidity is appropriate because the indoctrination of NSW students at NSW schools is a real issue that has not been addressed by government action to ban the Safe Schools program.
35. The Bill does not prohibit teaching about the theory of gender fluidity, but prohibits indoctrination into gender fluidity – teaching it as fact. HRLA considers that teaching about the theory of gender fluidity should be done in an age-appropriate manner, and would recommend that the proposed amendment to section 8 of the Bill (relating to primary education (K-Y6)) should prohibit teaching **about** gender fluidity, to ensure that children are not introduced at a young age to concepts of sexuality and gender that are inappropriate for their age.
36. **Non-ideological instruction.** Proposed sections 17B to 17E require school teaching on matters of parental primacy to be non-ideological, provide parents with the ability to object to children receiving instruction that is ideological (section 17D) and require schools to summarise and consult parents on matters of parental primacy.

37. Proposed section 17B requires teaching at government schools to be non-ideological. The wording in section 17B mirrors the wording of existing section 30 of the Education Act, which requires teaching to be secular. It is appropriate for partisan ideology on moral, ethical and political matters to receive the same treatment as sectarian religion in public schools. Advocacy of radical ideologies should be prohibited in a government school in the same way as advocacy for any particular branch of religion is prohibited. For schools to be truly secular, no one ideology should be advocated, particularly as relates to moral, ethical and political values. Students should be exposed to a variety of viewpoints and perspectives on these issues which should broadly reflect the values of their parents and guardians.
38. Concern could be raised that the requirement that instruction be non-ideological would:
 - 38.1 attack vulnerable students from minority groups;
 - 38.2 erase and deny the existence of vulnerable groups;
 - 38.3 prevent them from experiencing inclusion and a sense of belonging in schools; and
 - 38.4 constitute an attack on vulnerable students.
39. Such claims do not stand up to scrutiny, particularly where they are being advanced by LGBT activists. Indoctrination is not necessary to protect LGBT students or to allow for LGBT students to feel safe or participate in education. If this Bill is an attack on LGBT students, then that would mean that the existing Education Act is an attack on religious students because radical LGBT ideology is proposed to be treated the same as religious ideology – the teaching of it is banned.
40. It would be illogical to suggest that the existing prohibition in the Education Act on teaching religion is an attack on religious students and denies their existence. Our review of the Bill suggests that there is little basis for some of the more extreme claims being made about the threats of this Bill to vulnerable students. It is concerning that there is opposition to trying to keep schools neutral and secular where they teach moral, ethical and political content.
41. Objection could also be raised that these amendments would allow parents to deprive their children from hearing different views and would lead to “discredited” perspectives being taught in school. These objections are disingenuous. The Bill prevents ideological indoctrination and promotes the teaching of a wide variety of perspectives on moral, ethical and political issues.
42. Detractors of the Bill suggest that it will prevent teachers and counsellors from supporting LGBT students and will punish teachers that support LGBT students. This concern is misplaced, as the Bill only prohibits indoctrination by teachers. Teachers do not need to formally indoctrinate students when they teach their classrooms in order to support minority students. Assistance and support of LGBT students is not “teaching” and so will not attract any sanction against teachers who support LGBT students.
43. For many years, NSW government schools have been secular and religious indoctrination has been prohibited. It would be wrong to suggest that such provisions prevent teachers from supporting religious students or that teachers who support religious students will be punished. The Bill certainly does not mandate that any student should not be supported or given appropriate counselling (or referrals). The Bill targets the teaching of ideology, not the provision

of support generally. It is difficult to see how this Bill would prejudice the ability of teachers to support vulnerable students.

44. Proposed section 17C provides that this prohibition of ideological teaching extends to all staff of schools. This is a sensible measure to ensure that indoctrination isn't carried out informally.
45. Proposed section 17D provides that no child is required to receive instruction on moral, ethical and political matters if parents object. This provision is in line with international human rights covenants which recognise parental primacy in education.
46. This proposed section 17D could potentially set too low a bar for allowing parents to remove children from all manner of instruction, but in a practical sense this is very unlikely. Hypotheticals which envision a parent removing a child from any and all instruction are insulting to parents and reveal a general distrust of parents. However, if the concern about parental misuse of this provision is legitimate, amendment could be made to put in place a better framework for parents to remove children from classes which include ideological indoctrination.
47. Such a regime could be modelled on existing section 26 of the Education Act, which allows for exemptions for conscientious objections on religious grounds. Section 26 provides that parents can obtain a certificate from the Secretary of Education for exclusion of their children from certain parts of educational instruction where there is a conscientious objection on religious grounds.
48. It would not be inconsistent to extend the protection on the narrow grounds of religion to also cover objections from parents on moral, ethical and political grounds.
49. Proposed new section 17E requires government schools to provide a summary of all teaching content that will include teaching on moral, ethical and political matters. Schools must also consult with parents.
50. This new clause is an appropriate mechanism for ensuring that parents can make informed decisions about the education that their children receive and allows schools and parents to work together to deliver consistent teaching on moral, ethical and political values to students.
51. The clause is commendable. It is a parental right to choose the education of their children (see above) and this clause is an effective mechanism for giving parents input into the curriculum on moral, ethical and political issues.

NESA Act

52. The NESA Act establishes the NSW Education Standards Authority to provide leadership in improving standards of school education and to ensure that government schools develop appropriate curriculum and teaching standards.
53. The Bill includes a new clause 11(1)(d) which gives NESA the additional obligation of ensuring that schools do not teach gender fluidity and acknowledge that parents are primarily responsible for moral, ethical and political formation of their children. NESA must ensure that these two principles are reflected in the school curriculum, regulatory standards and professional standards for teachers.

54. HRLA commends these changes to the NESAs Act which will dovetail well with the changes proposed to the Education Act.

Teacher Act

55. The Teacher Act provides for professional teaching standards and accreditation of teachers in NSW. Establishment of teaching standards and accreditation of teachers is overseen and administered by NESAs.
56. The Bill proposes a new clause 20(1A) that will require NESAs to ensure that professional teaching standards do not teach gender fluidity and recognise parental rights in respect of moral, ethical and political values that are to be taught to students.
57. HRLA commends these provisions.
58. Proposed section 24(2) of the Bill requires NESAs to revoke a teacher's accreditation where a teacher fails to recognise parental rights or teaches gender fluidity. Objection could be made that this sanction is not proportionate - a teacher could lose their registration even where they accidentally or unintentionally contravene this section.
59. Given the potentially serious effect of sanctions under this proposed section, it may be prudent to raise the standard necessary to require NESAs to revoke a teacher's accreditation. Amendments could be made to proposed section 24(2) to provide that a teacher's registration is only to be removed where they have intentionally taught gender fluidity or indoctrinated students on moral, ethical and political issues.

Possible amendments to Bill

60. Some minor amendments could be considered to improve the utility of the Bill. Most of these amendments just relate to typographical errors or to ensure clarity and consistency in how the proposed amendments are intended to operate. We have detailed some suggestions below.
61. However, we would support the Bill being passed in its current form even if these possible amendments are not adopted.
62. **Education Act.** The Bill could be improved by making the following amendments in respect of the Education Act:
- 62.1 To address concerns about the use of the word "disorder", it could be replaced with "conditions" regarding intersex people in the definition of 'gender fluidity'.
- 62.2 To ensure that teaching on sex and gender is age appropriate, teaching *about* gender fluidity could be prohibited in primary schools.
- 62.3 Provisions could be strengthened allowing parents to remove children from classes that teach material on moral, ethical and political issues by providing a higher threshold for parents to be able to remove children from particular classes.

- 62.4 An apparent typographical error should also be corrected in the new proposed wording to be inserted by Schedule 1 [4] of the Bill in the new subsection (p). In particular, the word “of” should apparently be inserted after “Article 18(4)” before the reference to the ICCPR.
- 62.5 Sections [6], [7], [8], [9], [10] and [14] of Schedule 1 each propose to insert some similar wording into various sections of the Education Act. However, there is some inconsistency, as [6] and [7] refer to “*any teaching of gender fluidity*” whereas [8], [9], [10] and [14] refer to “*the teaching of gender fluidity*”. For consistency, we suggest that the proposed wording in each of these sections refer to “*any teaching of gender fluidity*”.
- 62.6 No amendments have been proposed to sections 16 or 17 of the Education Act. For clarity and consistency with the preceding amendments and the new proposed sections 17A to 17E, we suggest that these sections also be amended to expressly clarify that additional courses of study and other activities, and additional curriculum requirements determined by the Minister, must not include any teaching of gender fluidity.
- 62.7 It appears that a word has been inadvertently omitted from the amendment proposed by Schedule 1 [12]. In particular, we suggest that the word “them” be inserted after “make”.
63. **NESA Act.** The only suggested change to the NESA Act is typographical. It appears that the new wording proposed in Schedule 2 [2] inadvertently contains a typographical error, being to insert a full stop after subsection (d)(iii) rather than ending it with a comma (to continue the list). This should be corrected for clarity.
64. **Teacher Act.** The only substantive change we would suggest to the Teacher Act is:
- 64.1 The threshold could be raised for cancelling a teacher’s registration in the proposed section 24(2) of the Teacher Act so that a teacher will only have their registration revoked for deliberate non-compliance with the obligation to respect parental rights in relation to moral, ethical and political teaching.
- 64.2 Schedule 3 [2] of the Act also contains the same inconsistency referred to above regarding “*the teaching of gender fluidity*”. For consistency with the other amendments to the Education Act, we suggest the proposed wording refers instead to “*any teaching of gender fluidity*”.

CONCLUSION

65. We thank the Portfolio Committee for the invitation to make a submission and welcome any opportunities to appear in support of this submission.

Yours faithfully,

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Principal Lawyer