

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

**Organisation:** Catholic Archdiocese of Sydney and the Maronite Eparchy of  
Australia

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**LEGISLATIVE COUNCIL  
PORTFOLIO COMMITTEE NO. 3 – EDUCATION  
INQUIRY INTO THE  
EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020**

**SUBMISSION FROM THE CATHOLIC ARCHDIOCESE OF SYDNEY  
AND THE MARONITE EPARCHY OF AUSTRALIA**

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# Introduction

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The Catholic Archdiocese of Sydney and the Maronite Eparchy of Australia welcome the opportunity to provide a submission on the *Education Legislation Amendment (Parental Rights) Bill 2020 (Bill)*.

New South Wales has the highest religious affiliation in the country, with 66 per cent of the population professing a faith, and 24.7 per cent of the state identifying as Catholic.

There are close to 600 Catholic schools in New South Wales, providing education to more than 250,000 students and employment to thousands of staff. Catholic students also make up a significant presence in government schools, with at least 130,000 Catholic students attending government schools, with that number potentially reaching in excess of 200,000.

The Catholic Church, in both its institutions and its adherents, has a significant stake in government and non-government schooling in New South Wales, and recognises the importance of this Bill in the shaping of education.

The Bill does two key things: it reinforces the role of parents as primary educators of their children, and prohibits the teaching of gender fluidity in the classroom.

Parents are the primary educators of their children. They share the responsibility for the education of children with schools, but do not forfeit this obligation to them. For this reason, it is necessary that schools partner with parents in the education of their children.

The Bill seeks to reinforce the primary role of parents in the education of their children, and further their partnership with the school by requiring of the school transparency and full accountability in matters of 'parental primacy.' This type of open collaboration between school and parents is the basis of a sound philosophy of education, and should be the natural relationship between them. Legislation should not be required to ensure that this occurs. However, it is prudent to reinforce this natural state of education, as it seems to be increasingly under attack.

The Bill also seeks to prohibit the teaching of gender fluidity in the classroom. Given the concerns of many parents about these matters being taught at school, and potentially undermining the rights of parents to address issues of gender and sexuality when they deem appropriate for their children, it is a prudent inclusion in the Bill. Additionally, research on potential contagion effects amongst children of gender dysphoria provide another reason for legislative limits to be placed upon schools in these matters.

# Key themes contained in the Bill

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## Parents as primary educators of their children

Parents are the “primary and principal educators” of their children<sup>1</sup>, whose task of providing children with “a sound cultural and religious formation” is of the “utmost importance”<sup>2</sup>. This responsibility cannot normally be delegated to or rightly be usurped by others: at most it can be shared with them, while leaving the parents the primary educational decisionmakers and providers. Schools are crucial institutions that support, but never replace, the role of parents in their task of educating their children.

The *Education Act 1990* (NSW) (**Act**) itself recognises the primacy of parental responsibility in education<sup>3</sup>.

The education of children includes, but is not limited to, academic learning. It is the formation of the whole human person, including their education in matters moral and religious. As the Congregation for Catholic Education has written:

“Education is not just knowledge, but also experience: it links together knowledge and action; it works to achieve unity amongst different forms of knowledge and pursues consistency. It encompasses the affective and emotional domains, and is also endowed with an ethical dimension: knowing how to do things and what we want to do, daring to change society and the world, and serving the community.”<sup>4</sup>

The understanding of education as being inclusive of moral and religious components is not simply the understanding of the Catholic Church or other faith traditions. Article 18.4 of the *International Covenant on Civil and Political Rights*, to which Australia is a signatory, reads:

“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.”

Civil authorities in plural societies like Australia have a role in supporting parents in this provision of a holistic education, out of respect for the religious freedom of individuals and families, and also in recognition of the centrality that formation in these areas has to all aspects of education.

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<sup>1</sup> Pope Paul VI, *Declaration on Christian Education, Gravissimum Educationis*, 28 October 1965. [online] Vatican. Available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651028\\_gravissimum-educationis\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html) [Accessed 25 Feb. 2021], paragraph 3.

<sup>2</sup> Pope John XXIII, *Mater et Magistra*, 15 May 1961. [online] Vatican. Available at [http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf\\_j-xxiii\\_enc\\_15051961\\_mater.html](http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html) [Accessed 25 Feb. 2021], paragraph 195.

<sup>3</sup> *Education Act 1990* (NSW), s 4(b).

<sup>4</sup> Congregation for Catholic Education, *Educating Today and Tomorrow: A Renewing Passion*. 2014. [online] Vatican. Available at: [http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20140407\\_educare-oggi-e-domani\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20140407_educare-oggi-e-domani_en.html) [Accessed 25 Feb. 2021]

This support does not only include allowing parental choice in terms of whether to choose a religious school for their child or providing space in government schools for Special Religious Education. It also includes a requirement that religious and ethical matters be presented in a neutral fashion within government schools, and affording parents the right to remove their children from classes with which they disagree.

As the UN Human Rights Committee has written:

“The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”<sup>5</sup>

In essence, the Catholic Church and international human rights jurisprudence are in agreement with the rights of parents when it comes to the education of children. We submit that the Bill reflects this common ground.

## **The prohibition of gender fluidity being taught in the classroom**

The Bill also seeks to prohibit gender fluidity being taught in the classroom. Such a prohibition is an extension of the recognition of the rights of parents when it comes to matters of ‘parental primacy.’ It is for parents to determine the appropriate time for children to be introduced to concepts of gender fluidity, and not for a school to ‘force their hand’ in such sensitive matters.

Matters of parental primacy are not the only reason that these provisions are important.

Concepts of gender fluidity or the characterisation of gender as being entirely a social construct do not enjoy a rigorous scientific underpinning, and there is legitimate disagreement about how much of gender expression is nature versus nurture. While narrow and rigid sexual stereotypes are not consistent with the natural variation found within the experience and expression of biological sex, there are also undoubtedly biological differences between man and woman. Defining gender as completely or even mostly malleable ignores this reality, and so should not be taught in schools.

That schools in NSW allow single-sex education and divide students in co-educational schools into separate sporting teams and facilities is public acknowledgment of the reality of a biological difference between male and female.

Another risk of teaching gender fluidity in schools is the potential ‘social contagion’ of gender dysphoria. Research has demonstrated that the number of children presenting to gender clinics in Australia and the UK increases in the weeks following media coverage of transgender and gender

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<sup>5</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <https://www.refworld.org/docid/453883fb22.html> [accessed 19 February 2021]

diverse issues, suggestion a contagion effect in the discussion of transgender issues amongst young people<sup>6</sup>. This is consistent with the dramatic increase of children presenting with gender dysphoria in recent years<sup>7</sup>. Whether and when impressionable children are exposed to ideas that have the *prima facie* effect of encouraging them to experiment with gender is a matter for parents, and not for schools to decide unilaterally.

Additionally, while some children experience a persistent discordance between their biological sex and their gender expression, the overwhelming majority of these revert to experiencing an alignment with their biological sex post-puberty.

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<sup>6</sup> Bränström, Richard, and John E. Pachankis. "Reduction In Mental Health Treatment Utilization Among Transgender Individuals After Gender-Affirming Surgeries: A Total Population Study". *American Journal Of Psychiatry*, vol 177, no. 8, 2020, pp. 727-734. *American Psychiatric Association Publishing*, doi:10.1176/appi.ajp.2019.19010080. [Accessed 25 Feb. 2021].

<sup>7</sup> For example, in 2009-10, there were 94 children referred to the UK's Gender Identity Development Service. In 2019-20, that number was 2728. There was also a dramatic increase of referrals for children under the age of 6 (from six children in 2009-10 to at least 33 in 2019-20). See Gender Identity Development Service. GIDS referrals figures for 2016/17. (undated) [online]. Available at [http://gids.nhs.uk/sites/default/files/content\\_uploads/referral-figures-2016-17.pdf](http://gids.nhs.uk/sites/default/files/content_uploads/referral-figures-2016-17.pdf); [Accessed 25 Feb. 2021]. Gender Identity Development Service. "Number Of Referrals | GIDS". Gids.Nhs.Uk, 2021, <https://gids.nhs.uk/number-referrals>. [Accessed 25 Feb. 2021].

# Contents of the Bill

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The remainder of this submission will consider specific provisions of the Bill. Capitalised terms within this submission but not otherwise defined have the meaning given to them in the Bill.

## Section 3(1) – Definitions

### *Definition of ‘gender fluidity’*

In seeking to separate the aspects of gender that are grounded in biology from those that are based in gender theory, the Bill appropriately seeks to exclude only those matters that are still contested from being taught in classrooms.

### *Definition of ‘matters of parental primacy’*

The definition of parental primacy appropriately recognises the breadth of matters that covered by the reference to “religious and moral education” of children in Article 18.4 of the ICCPR. It is also consistent with the current NSW Department of Education document entitled *Controversial Issues in Schools - Procedures*, which defines “controversial issues” as “questions, subjects, topics or problems which create a difference of opinion, causing contention and debate within the school or the community. Controversial issues will differ across schools and communities.”<sup>8</sup>

## Sections 4(b) and 6 – Principles and objects

The insertion of a specific reference to matters of parental primacy in the principles and objects sections of the Act is an important recognition that education is not simply a matter of academic learnings, but includes the formation of the entire person.

## Sections 8(1)(e1), 10(1)(d1) and 12(1)(e) – Curriculum

The specific exclusion of gender fluidity from the primary school, secondary school and higher school certificate curricula is an appropriate measure. Whether it is necessary to be referenced in the sections of the Act that deal with minimum inclusions in curricula, rather than exclusions, is a matter for legislative drafters, but the concept is supported in principle.

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<sup>8</sup> NSW Department of Education. *Controversial Issues in Schools – Procedures*. 14 June 2007. [online]. NSW Government. Available at: <https://policies.education.nsw.gov.au/policy-library/associated-documents/controversial-procedures.pdf> [Accessed 25 Feb. 2021]



## Section 14(5)-(6) - Syllabuses

Proposed section 14(5) is an appropriate insertion, as it facilitates accountability from schools with respect to matters of parental primacy. As mentioned above, the rights of parents to ensure the religious and moral education of their children in accordance with their beliefs is a right recognised by the ICCPR, and this section supports the transparency that is necessary for parents to exercise this right.

Proposed section 14(6) provides an additional safeguard against the teaching of gender fluidity by requiring that not only schools, but the NSW Education Standards Authority, are required to ensure gender fluidity is not taught in the classroom.

## Section 17A – Teaching of gender fluidity

As mentioned above, the appropriate place to include the prohibition on the teaching of gender fluidity is a matter for legislative drafters, but the concept is supported in principle.

## Section 17B – Teaching to be non-ideological

The requirement that teaching of matters of parental primacy be non-ideological is sensible for non-government schools, as it ensures that the education is “strictly non-sectarian and secular” as required by the Act<sup>9</sup>. It is also consistent with the UNHRC guidance on Article 18.4 of the ICCPR cited above, which opines that “article 18.4 permits public school instruction in subjects such as the general history of religions and ethics *if it is given in a neutral and objective way*.”<sup>10</sup> [Emphasis added.]

## Section 17C – Application to teaching, instruction, counselling and advice

The extension of the requirements of the Bill to non-teaching staff is an important inclusion, as it recognises that schools are small communities where each staff member, whether or not they are in a formal teaching role, plays a role in the formation of children.

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<sup>9</sup> *Education Act 1990* (NSW), s30.

<sup>10</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <https://www.refworld.org/docid/453883fb22.html> [accessed 19 February 2021]

## Section 17D – Objection to teaching on matters of parental primacy

The language of the proposed section 17D mimics the language of the existing section 33 of the Act, which requires that “no child at a government school is to be required to receive any general religious education or special religious education if the parent of the child objects to the child’s receiving that education.”

If parents are required to opt-in, and have an unquestioned and unfettered right to object, to matters of parental primacy that involve religious education, then it is only just that they similarly have an unquestioned and unfettered right to opt-in and/or object to other matters of parental primacy (or “moral education,” as it is referred to in the ICCPR.) A failure to include a right for parents to objects risks treating religious education in a discriminatory manner, contrary to the provisions of the ICCPR.

Additionally, the ability of parents to object is consistent with the UNHRC guidance on Article 18.4 cited above, which states that “public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”<sup>11</sup>

## Section 17E – Consultation on matters of parental primacy

The requirement for parental consultation in proposed section 17E is necessary for the exercise of parental rights that are otherwise provided for in other sections of the Bill. This proposed section is consistent with the existing *Controversial Issues in Schools - Procedures*, which reads:

“It is essential that principals maintain communication with parents and carers on teaching and learning programs, visiting speakers, external providers and other school activities, including student organised activities, in which controversial issues may be addressed. Parents and carers need to be advised of the specific details of school activities, programs or events addressing controversial issues and the relevance to the curriculum and school programs and activities. Where advice is appropriate, it must be given prior to the occasion so parents and carers can provide consent or withdraw their child from a particular session(s) on controversial issues. The parental right to withdraw their child must be respected.”<sup>12</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> NSW Department of Education. *Controversial Issues in Schools – Procedures*. 14 June 2007. [online]. NSW Government. Available at: <https://policies.education.nsw.gov.au/policy-library/associated-documents/controversial-procedures.pdf> [Accessed 25 Feb. 2021]

## **Section 20A – Functions of the Authority under this Act**

The specific inclusion of parents as stakeholders in the functions of the NSW Education Standards Authority is an appropriate indication of the primary role of parents in the education of their children, and consistent with the other provisions of the Act, the Bill and also with the ICCPR.

## **Section 27B – Authority to monitor compliance with matters of parental primacy requirements**

The inclusion of the ability of the NSW Education Standards Authority to monitor compliance of government schools with certain provisions of the Act is an appropriate way of ensuring that the primary role of parents in the education of their children is upheld.

## **Section 30 – Secular instruction**

As mentioned above, the appropriate place to include the prohibition on the teaching of gender fluidity is a matter for legislative drafters, but the concept is supported in principle.

## **Section 136 – Review of compliance with matters of parental primacy obligations**

Including a reporting obligation in terms of compliance with the provisions of the Act that will be monitored pursuant to the proposed section 27B is appropriate, as it ensures that any breaches of obligation attain the necessary attention at a parliamentary and ministerial level.

## ***Amendment of the Education Standards Authority Act 2013 and the Teacher Accreditation Act 2004***

The proposed amendments to other pieces of legislation related to the Act in a way that is necessary or beneficial to ensure the objects of the Bill are included in all aspects of the education system are supported.

# Conclusion

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The Catholic Archdiocese of Sydney and the Maronite Eparchy of Australia are grateful to the Portfolio Committee for conducting this inquiry.

We trust that the Committee will respect the role of parents as primary educators of their children, particularly with respect to religious and moral matters. This role of parents is not only understood as part of Catholic teaching, but also upheld in international human rights documents, and recommend that this role be better reflected and protected in legislation by the passage of this Bill.