

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

Organisation: Equality Australia

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**EVERY CHILD DESERVES
A QUALITY EDUCATION
IN A SCHOOL WHERE
THEY HAVE A PLACE
AND FEEL VALUED**



**SCHOOL'S A PLACE
FOR EVERYONE:**

SUBMISSION TO THE INQUIRY INTO THE EDUCATION
LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020

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ABOUT EQUALITY AUSTRALIA

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people.

Equality Australia has been built from the Equality Campaign, which ran the successful campaign for marriage equality, and was established with support from the Human Rights Law Centre.

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We acknowledge that our offices are on the land of the Kulin Nation and the land of the Eora Nation and we pay our respects to their traditional owners.

Equality Australia has no issues with making this submission public.

EXECUTIVE SUMMARY

Thank you for the invitation to make a submission to the NSW Parliamentary inquiry into the Education Legislation Amendment (Parental Rights) Bill 2020 (NSW) (Bill).

Respect and understanding grow when a range of different students from diverse backgrounds play, socialise, and learn together. This Bill undermines the right of every child to a quality education in a school where they have a place and feel valued.

It does so by:

- denying the existence of trans and gender diverse people and preventing teachers, counsellors and school staff from affirming and supporting trans and gender diverse students;
- instilling a culture of fear among our teachers who will fear losing their jobs if they discuss any contemporary topics in the classroom on which parents may have differing views;
- allowing parents to withhold important lessons from their children which enlarge their knowledge of the diverse and changing world in which they live, and which encourages them to learn how to think for themselves and understand people who are different to them;
- burdening schools and teachers with additional and unworkable bureaucracy that takes them away from doing their important and life-changing work in educating our future generation, and requires them to resolve conflicts between and among parents with differing views;
- introducing irresolvable inconsistencies with legal duties of care that schools owe to their students, including under federal and state anti-discrimination laws.

This Bill attacks not just teachers and trans and gender diverse students, but all of us who believe in a strong education system that supports every child, no matter who they are or may grow up to be, or whatever family they come from. There is nothing in this Bill which merits further consideration by NSW Parliament.

We, and thousands of our supporters, strongly oppose this Bill.

In this submission, we have also included the stories of some of our supporters who have voiced their concerns about this Bill and the impact it will have on them or their families.

RECOMMENDATION

The Education Legislation Amendment (Parental Rights) Bill 2020 (NSW) not proceed any further.

1. UNDERMINING EDUCATION

Schools provide children with their first relationship with the world outside of their families, enabling the development of social relationships and interactions. Strong communities are created when everyone is comfortable, skilled and enthusiastic interacting with a wide range of people.

This Bill undermines quality education for students in NSW public schools and encourages environments where bullying become acceptable if it accords with a parent's moral, ethical, political or social values.

(a) Sections 17B and 17D of the Bill

This Bill allows a parent to remove a child from any lesson at a public school which contradicts their political, social or personal values.¹ This is done in proposed section 17D which gives parents a right to object to their child receiving any ‘instruction’ in a government school on what it terms *‘matters of parental primacy’*.

‘Matters of parental primacy’ are defined by the Bill to mean *‘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’*.² This broad definition means that parents can withdraw their children from any classes which explore a very wide range of topics, including those involving morality and ethics, differing political and social values, or matters relating to personal wellbeing and identity.

But further, the prohibition on giving ‘instructions’ to a child contrary to their parent’s objections means it is not just teaching that is affected, but the ability of anyone at a government school to discipline a student or enforce standards of behaviour to which a parent has objected.

The power of section 17D is reinforced by section 17B which prohibits what it describes as ‘non-ideological instruction in matters of parental primacy’ in government schools.

(b) Gagging discussion in the classroom

This Bill will have the effect of gagging discussions in public schools on contemporary topics, depriving all children in public schools from hearing different perspectives on important issues. This is because teachers will simply avoid discussing such issues for fear of having a complaint brought by a parent who has different views, no matter how isolated or isolating those views may be.

When teaching topics concerning political and social values, matters of personal wellbeing and identity, and moral and ethical standards, teachers will fear discussing contemporary political, social or moral issues that may be considered ‘ideological’.³ Teachers will be at risk of losing their accreditation, and thereby their ability to teach,⁴ if a parent complains that teaching about issues such as the Stolen Generations, racism, climate change, or the struggle for LGBTIQ+ and other civil rights is ‘ideological’. Indeed, this Bill shows just how easy it is to treat the very existence of some people – in this case, trans and gender diverse people – as an ideology, rather than a simple reality. Accordingly, teachers will either remove content that may be seen – rightly or wrongly – as controversial or present discredited counter-narratives into their classroom in order to be seen as non-ideological.

It is not difficult to imagine the following scenarios occurring:

- In response to a complaint about climate change being taught in science class, a teacher begins their class with *‘there are some who deny that climate change is real, or is induced by humans. What we are learning today is one view of the cause of climate change, but there may be other views’*.
- A couple of parents object to their children learning about holidays in different religions. Their teacher decides not to teach about holidays at all to avoid the difficulties of meeting all parents’ views.

In his second reading speech introducing the Bill, One Nation NSW Leader the Hon Mark Latham MLC said: *“Parents are sick and tired of students being lectured about refugees, climate change and racial and Indigenous issues, but with*

¹ *Education Act 1990* (NSW), proposed s 17D.

² *Education Act*, proposed 3(1).

³ *Education Act*, proposed s 17B.

⁴ *Teacher Accreditation Act 2004* (NSW), proposed ss 21(1A) and 24(2).

only one side of the story being told.”⁵ The real question is, what side of the ‘story’ are students not being taught about refugees, climate change, racial and Indigenous issues, that One Nation NSW would like to see being taught in our public schools?

Children must not be denied the right to engage with and develop their own moral and ethical standards, political and social values, and opinions on matters of personal wellbeing and identity. This Bill allows parents to unilaterally withdraw their children from learning about ideas and opinions different to their own. Of course, a child can and should be guided by their parent’s values. But children should not be denied an opportunity to engage in the fullest sense with the real world in which they live and people who have differing ideas and experiences to their own. A girl should not be denied education regarding women in positions of power just because her parents believe a woman’s place is in the home. A boy should not be pulled out of a science class just because his parents believe in creationism or deny the existence of climate change. In the same way, an LGBTIQ+ student should not be denied education about the existence of people like them just because their parents have a hard time accepting their (or any) child’s gender or sexuality.

JOSHUA, MARRICKVILLE NSW 2204

“[A]s a parent of a trans child, the thought of allowing this so called 'Education Bill' to get any traction is a truly abhorrent one.

My child is one of the bravest people I have ever met. They have the guts and foresight to know that they need to change something on the outside to align with how they feel on the inside, and it's my job as a parent to support that strength, that foresight, and that decision.”

(c) Preventing discipline and enforcing anti-bullying standards

This Bill prevents anyone at a government school giving an ‘instruction’ to a child on any ‘matter of parental primacy’ to which the child’s parents objects. This will hamper the ability of public schools to enforce standards of behaviour to which a parent has objected because of their political, social or moral values.

For example, say a teacher overhears a student say to another student that ‘*all Muslims are terrorists*’. After similar repeated comments, the teacher raises the matter with the parents of the student. The parents say they actually agree with their child’s views and object to having their child silenced in sharing their views. The Bill now prevents the teacher providing any ‘instruction’ to the student on matters concerning moral and ethical standards and political and social values to which the parents of the child have objected.

Because of section 17D, a parent could object to a teacher enforcing any anti-bullying policy which conflicts with their views on women, LGBTIQ+ people, people from different cultural or religious beliefs, people with disability, or people living in non-nuclear family structures. Once a parent objects, a public school is forbidden to provide any ‘instruction’ to that child on any moral and ethical standards that conflicts with their parent’s views.

(d) Impact on LGBTIQ+ people and their children

We are extremely concerned that this Bill will mean that all students, but in particular LGBTIQ+ students and students from rainbow families, will be denied an education which includes any positive content about LGBTIQ+ people, and teachers will be hampered in addressing bullying against LGBTIQ+ people or their children.

⁵ [Second Reading Speech to Education Legislation Amendment \(Parental Rights\) Bill 2020](#), Legislative Council Hansard, NSW Parliament, 5 August 2020.

Yet, from Australia's largest national survey of 6,418 LGBTQA+ young people, we know that:

- 60.2% of LGBTQA+ secondary school participants have felt unsafe or uncomfortable in the past 12 months due their sexuality or gender identity.⁶
- 97.2% of LGBTQA+ secondary school participants reported hearing negative remarks regarding sexuality in the past 12 months, and 70.2% reported hearing negative language about gender identity or expression.⁷

The cost of this discrimination in educational settings is grave and immediate. Quite apart from the well-documented mental health impacts, 38.4% of LGBTQA+ secondary school students reported missing day/s from school in the past 12 months because they felt unsafe or uncomfortable.⁸ In respect of trans and gender diverse students, 64.3% of trans women, 54.4% of trans men, and 44.6% of non-binary participants reported missing day/s at their secondary or tertiary educational setting in the past 12 months due to feeling unsafe or uncomfortable.⁹

MARK, SYDNEY NSW 2017

"I've now lived to be 10 years older than my cousin. He unfortunately left us way too young due to suicide, primary driven by a lack of understanding and acceptance from his own immediate family. His family refused to accept him, keeping his young nieces and nephews from engaging with him due to what they perceived were his 'choices'. I firmly believe had his family grown up in a more educated environment, he would still be here today."

NIC STEEPE, JUNEE NSW 2663

"My home life was far from supportive, with my brother threatening to send me to hospital if I turned 'full gay' when I initially came out as bisexual.

School was the only place I could feel safe. Not because of other students, they were horrible, constant verbal abuse and exclusion. I began self-harming for a number of years, because the turmoil and anguish I felt inside needed a release.

The only reason I am still here today is because of a supportive teacher who recognised my struggle and supported me. They made me realise that my sexuality was something to be proud of."

2. A PLACE FOR EVERY STUDENT

Every child, no matter who they are or may grow up to be, should have a place in and feel valued at their school. This Bill is a direct attack on trans and gender diverse people, who are among our young people most

⁶ A Hill, A Lyons, J Jones, I McGowan, M Carman, M Parsons, J Power and A Bourne (2021) [Writing Themselves In 4: The health and wellbeing of LGBTQA+ young people in Australia](#), Melbourne: Australian Research Centre in Sex, Health and Society, La Trobe University, at 52.

⁷ Hill et al (2021) [Writing Themselves In 4](#), n6 above, at 57.

⁸ Hill et al (2021) [Writing Themselves In 4](#), n6 above, at 57.

⁹ Hill et al (2021) [Writing Themselves In 4](#), n6 above, at 58.

at risk of self-harm and suicidal ideation. But this Bill also has the potential to harm all students who, or who belong to families that, other parents find objectionable.

(a) Sections 17A and 17C of the Bill

The Bill prohibits providing support to trans and gender diverse students, as it prohibits recognising their existence. It does so by prohibiting, in sections 17A of the Bill and a number of other provisions, what it terms ‘gender fluidity’ from being taught, and from being part of course development and teacher training.¹⁰ It ends the employment of any teacher failing to comply with these requirements.¹¹ It also extends this prohibition to any teaching, instruction, counselling or advice provided to students by any non-teaching school staff, such as school counsellors, contractors, advisors and consultants, or school volunteers.¹²

‘Gender fluidity’ is defined to mean *‘a belief there is a difference between biological sex (including people who are, by their chromosomes, male or female but are born with disorders of sexual differentiation) and human gender and that human gender is socially constructed rather being equivalent to a person’s biological sex’*.¹³

This Bill denies the very existence of transgender and gender diverse people. It does so because, by merely using pronouns or names which do not accord with a person’s sex assigned at birth, teachers and other school staff are expressing a belief in a diversity of human gender which does not always align with a person’s presumed sex.

The Bill also describes people born with intersex variations as disordered. It incorrectly assumes that a person’s sex can be solely determined by chromosomes, writing into law a scientific nonsense that fails to recognise the biological diversity of sex characteristics (including XXY and XXX chromosomal patterns) that do not always conform to stereotypical binary notions of sex.

(b) Impact on trans and gender diverse students

Schools counsellors and teachers in public or private schools who recognise trans and gender diverse students for who they are, or who suggest that a person’s gender may be different to the one assigned to them at birth, will risk losing their jobs.¹⁴ Teachers will risk losing their accreditation, and thereby their ability to teach, if they respectfully recognise the gender diversity of students in their classrooms in line with their duty of care.

This Bill would force situations where a student, who comes out as trans to a school counsellor and seeks their support, will likely hear back: *‘I’m sorry we can’t discuss this’*.

Yet we know that LGBTIQ+ young people, particularly those who are trans and/or gender diverse, currently experience very high rates of suicidality and self-harm,¹⁵ which is strongly associated with exposure to harassment and bullying, particularly in schools.¹⁶ This Bill creates an unsafe environment for LGBTIQ+ students and teachers,

¹⁰ *Education Act*, proposed ss 8(1)(e1), 10(1)(d1), 12(1)(e), 14(6), 17A, 17C and 30; *Education Standards Authority Act 2013* (NSW), proposed s 11(1)(d); *Teacher Accreditation Act 2004* (NSW), s 20(1A).

¹¹ *Teacher Accreditation Act 2004* (NSW), s 24(2).

¹² *Education Act*, proposed s 17C.

¹³ *Education Act*, proposed 3(1).

¹⁴ *Education Act*, proposed ss 15(6), 17A and 17C; *Education Standards Authority Act 2013* (NSW), proposed 11(1)(d) and *Teacher Accreditation Act*, proposed ss 21(1A) and 24(2).

¹⁵ Hill et al (2021) *Writing Themselves In 4*, n6 above, at 16, 86-92; P Strauss, A Cook, S Winter, V Watson, D Wright Toussaint and A Lin (2017) *Trans Pathways: the mental health experiences and care pathways of trans young people* Perth: Telethon Kids Institute, at 33-35.

¹⁶ Strauss et al (2017) *Trans Pathways*, n15 above, at 51-54; L Hillier, T Jones, M Monagle, N Overton, L Gahan, J Blackman and A Mitchell (2010) *Writing Themselves In 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Melbourne: Australian Research Centre in Sex, Health and Society, La Trobe University, at 73-77.

and children in LGBTIQ+ families, and prevents teachers from seeking to affirm the right of all children to feel safe at school. Gender diverse young people, in particular, are at greater risk of homelessness, physical abuse, self harm and suicide.¹⁷ They are more likely to have moved schools or dropped out of school as a result of discrimination and to have had problems at school such as difficulty concentrating, reduced academic performance and hiding at recess and lunchtime.¹⁸ Young sexuality and gender diverse people who attend a school that is supportive, rather than discriminatory, are less likely to self harm and attempt suicide.¹⁹

ALEXA, REDFERN NSW 2016

“My daughter attends a school where there is a student who has transitioned gender. This student left another school due to the lack of tolerance shown them. They have been welcomed at my daughter’s school and never been made to feel anything more than the unique, valuable and talented person that they are. ...

I am proud of my daughter and her school for normalising what must have been an extraordinarily difficult journey, for embracing and validating everything this student is now and will become. That is the only sort of school this state should be offering. There is enough prejudice in the world without legislating the perpetuation of it.”

(c) Impact on other students

Every student who grows up in a family or situation that another parent finds objectionable, may find themselves silenced in class. Because of the provisions on parental primacy discussed above, teachers may simply remove content to avoid the disruption caused by a parent who threatens to pull their child out of any class featuring content they disagree with. One parent may have the effect of stifling the discussion of content that every other parent who doesn’t complain supports being taught.

For example, say a teacher asks their students to write a story about their favourite thing to do and share it with the class. In responding to that activity, a student talks about going to the playground with their two mums. However, the parent of another student, who hears about this, objects to their child hearing same-sex relationships ‘normalised’ in class. Section 17D of this Bill would leave that teacher with no answers as to how they should reconcile different views among parents.

Every student deserves to have who they are and why they matter reflected in class, regardless of what another parent thinks about them or their family. This Bill conflicts with the duty of care schools have to the welfare of all their students.

¹⁷ Strauss et al (2017) [Trans Pathways](#), n15 above, at 33-35, 51-54, 57-59 and 62.

¹⁸ Strauss et al (2017) [Trans Pathways](#), n15 above, at 52-54.

¹⁹ Strauss et al (2017) [Trans Pathways](#), n15 above, at 51; Hillier et al (2010) [Writing Themselves In 3](#), n16 above, at 73-77.

ELIZABETH, CHERRYBROOK NSW 2126

“As a trainer of students from disadvantaged areas I train students in job skills. Most of these teenagers and young adults have never been accepted in schools and are struggling to adjust to life as adults and working with other adults. They have not known what it is like to be accepted because until the last few years their identity was not recognised. They were the outcasts and due to this they have missed out on valuable education years. They need to be celebrated for everything that is unique about them as we all are. There is only one of each of us and we all deserve to be treated as such.”

(d) Discriminatory and unconstitutional

Schools and teachers have a legal obligation to educate students in NSW public schools without discrimination, including based on their ‘transgender status’, ‘gender identity’ or ‘intersex status’. By denying the existence of trans and gender diverse people and mischaracterising intersex people as ‘disordered’ in course development and teaching materials, this Bill contradicts non-discrimination obligations under the *Anti-Discrimination Act 1977* (NSW) and the *Sex Discrimination Act 1984* (Cth). The latter means that this Bill is also likely to be inconsistent with federal law, and therefore Constitutionally inoperative.²⁰

ARIANE, ASHBURY NSW 2193

“I teach gender and sexuality diverse kids. I've seen the looks of appreciation, relief and joy when I affirm their existence, humanity and equality. This bill represents cruelty to those kids. Parents may well want to control their kids' access to information about the existence of these kids, but those rights don't come anywhere near the rights of the kids themselves to be able to be safe at school.”

3. UNWORKABLE AND UNNECESSARY

Teachers who encourage their students to ask the big questions and who recognise the diversity of students in their classrooms should be recognised for their efforts, not restricted.

This Bill requires public schools to publish an advance annual summary of everything being taught that year which touches on matters concerning any political or social values, moral or ethical standards, or personal wellbeing and identity.²¹

Apart from requiring teachers to summarise a year’s worth of work at the beginning of each year, it is impossible to see how this requirement will encourage students to ask questions in class and be encouraged by their teachers to think for themselves about contemporary issues as they arise. This Bill belies the interactive and responsive nature of teaching, where questions that students ask in class provide important yet unexpected opportunities for learning and exploration.

Rather than supporting our teachers to teach, this Bill also requires them to spend time resolving conflicts among parents (and even between parents of the same child) with different and potentially irreconcilable political or social views. The Bill provides no mechanism as to how a teacher is supposed to reconcile an objection from one parent which is not supported by the other parent of the same child. Nor does the Bill provide a mechanism as to how a

²⁰ Australian Constitution, s 109.

²¹ *Education Act*, proposed s 17E.

teacher is supposed to reconcile an objection from one parent *not* to provide an instruction to their child on a particular matter, when that child's behaviour is otherwise impacting on another child's wellbeing and safety at school.

4. PARENTS ALREADY HAVE A SAY

Parents want the very best for their kids and our leaders should want the same.

That's why parents are already recognised as having the primary responsibility for their child's education,²² and have choices about how and where their children are educated.²³ Religious parents can already object to their children being taught particular content.²⁴

There is simply no need for this Bill.

OLIVIA, MOUNT KEMBLA NSW 2526

"As a person of religious faith I am disturbed and saddened that this bill has been introduced to parliament. People who are LGBTIQA+ deserve support and love, not to be subjected to this type of discrimination. ...

Students need to hear alternate views to their own to develop critical thinking skills. Allowing their parents to remove them from classes that teach science, not belief, is not to their benefit, or any benefit to the community at large. Any belief system that cannot withstand alternative ideas is not credible."

5. CONCLUSION

Equality Australia strongly opposes this Bill. There is nothing in it which warrants further consideration, and plenty in it that is harmful, discriminatory and unworkable. The *Education Act* already recognises the important role that parents play in their child's education, acknowledging their primary responsibilities in respect of their child's education and giving them options as to how their children are educated. But the *Education Act* also recognises the right of every child to receive an education and the duty of the State to ensure that education is of the highest quality.²⁵ This Bill would undermine the fundamentals of our education system, harm students and undermine the role of teachers, who do an incredibly difficult and important job in educating the future generation. This Bill must be rejected because every child deserves a quality education in a school where they have a place and feel valued.

²² *Education Act*, s 4(b).

²³ *Education Act*, s 22.

²⁴ *Education Act*, s 26.

²⁵ *Education Act*, s 4.