

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

Organisation: Women's Electoral Lobby (NSW)

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Submission on Education Legislation Amendment (Parental Rights) Bill 2020

Chair Portfolio Committee, Education

Thank you for the opportunity to comment on the Education Legislation Amendment (Parental Rights) Bill 2020.

Women's Electoral Lobby NSW has prepared the following comments on the Bill. Please address specific questions or further requests to Dr Mary O'Sullivan

Yours sincerely

Philippa Hall

Convenor WEL NSW

About Women's Electoral Lobby

Women's Electoral Lobby, established in 1972, is a national, independent, non-party, feminist political lobby group dedicated to creating a society where women's participation and their ability to fulfill their potential are unrestricted, acknowledged and respected and where women and men share equally in society's responsibilities and rewards. It is an incorporated association.

WEL has worked tirelessly for nearly 50 years to improve the position of women in Australian society.

WEL applies a feminist approach to all its work, from policy analysis and development to campaigning. WEL works within a feminist policy framework. In proposing and analyzing policy solutions, we measure fairness and justice for women and fairness and justice for society. WEL lobbies and works with governments at all levels to achieve better and fairer legislative, policy and program outcomes in order to achieve equality for all women.



WEL Recommendations to the Inquiry

WEL recommends:

That the Inquiry recommend that the Bill not proceed as it will undermine the delivery of quality education in NSW and impose an impossible and unjustified administrative burden on the education system. If passed, it will undermine the critical role schools need to play in developing children and young people's understanding of and capacity to prevent bullying, sexual assault and domestic violence, and to develop their capacity for relationships based on equality, consent and respect;

That consideration be given to broadening the definition of 'parents' to include families and communities, incorporated into legislation and policy where possible;

That urgent consideration be given to strengthening the provision and delivery of respectful relationships, sexuality and sexual health education in NSW Public schools and to making such provision mandatory.

General Comments on the Bill

Women's Electoral Lobby has a long history of advocating for evidence based legislation, policy and practices which support achievement of gender equality in Australia, including through schooling, TAFE, universities and other formal and informal education provision. Over a fifteen year period from 1980 through to 1994 non-sexist education programs and teaching in schools were associated with dramatic advances in girls' school achievement and university participation.¹

There is now a broad and growing community acceptance of the critical role schools need to play in developing children and young people's understanding of and capacity to prevent bullying, sexual assault and domestic violence, and to develop their capacity for relationships based on equality, consent and respect.

WEL sees a need for a renewal and refreshment of such education programs and teaching in schools, with an urgent first priority on promoting equal and consenting sexual relationships and sexual health, and on anti-violence and anti-bullying taught through subjects such as Personal Development, Health and Physical Education as well as through school wide programs. These need to accept that many younger women and men no longer want to be confined by rigid gender identities and stereotypes.

¹ See Long, M et al 'Participation in Education and Training 1980-1994', ACER, 1999(A report based on data from the Longitudinal Study of Australian Youth) access at <https://files.eric.ed.gov/fulltext/ED469918.pdf>



The Bill's amendments will undermine quality education in NSW and impose an impossible administrative burden.

Section 4b of the NSW Education Act (1990) clearly states that the 'education of a child is primarily the responsibility of the child's parents'. The Bill's amendments will require schools, curriculum and standards bodies to identify, interpret and codify distinctive parents, guardians and carers 'moral and ethical standards, political and social values and matters of personal well-being and identity including gender and sexuality'. This would be an almost impossible undertaking in a modern, pluralist society and one likely to further marginalise students, parents and community members from minority and disadvantaged backgrounds.

Proposed amendments in the Bill, where small groups of parents could impede and disrupt their own and other children's access to particular areas of learning, would further undermine NSW public schools' capacity to provide quality, mainstream, universally accessible and secular education. They would make it more difficult for public schools with limited resources to comply with Section 6b of the Act to 'deliver a high standard of education in government schools which is provided free of charge for instruction and without discrimination on the ground of sex, race or religion'. They would also negatively impact on the Act's objectives of:

- (e) mitigating educational disadvantages arising from the child's gender or from geographic, economic, social, cultural, lingual or other causes,
- (f) provision of an education for Aboriginal children that has regard to their special needs,
- (g) development of an understanding of Aboriginal history and culture by all children,

WEL is confident that other expert submissions to the Inquiry will outline more practical challenges the Bill's administrative proposals would present for schools, particularly for public schools and teachers serving economically and culturally diverse populations.

For example, as we illustrate in our specific comments on curriculum learning areas, small and organised groups of parents and carers could disproportionately influence curriculum, teaching and learning practices in particular schools without being representative of other parents, including those with diverse values and beliefs, while excluding most parents and carers who generally support their children's teachers and schools.

The Bill's punitive provisions for monitoring and reporting, with severe penalties for teachers who respond with professional attention to children and young people's questions regarding their struggles with gender identities, would destroy trust and compromise the duty of care teachers and school counsellors must show their students and which most students and families appreciate and expect.²

² NSW Government Education, *Code of Conduct* February 2021, Section 8 Respectful and Safe Relationships 8.1 Dignity and Respect, 8.2 Bullying Harassment and Discrimination and 8.6 Duty of Care-



The Bill would pervert the creative potential of parent and school community collaboration through imposition of an entirely negative model. The shadow of ill-defined 'matters of parental primacy', determined at school level, as well as through challenges to the overarching state-wide curriculum, would paralyse the work of teachers and turn schools into places of suspicion and accusation, rather than nourishing the optimism and openness which underpins young people's learning and supports their well-being³.

Extensive opportunities for parent, family and community engagement already exist but can fall short.

The Bill ignores the already existing extensive opportunities that exist for parents, carers and community members to engage with their local public schools, to identify concerns or objections to curriculum and teaching and to withdraw their children from lessons or learning activities.

These are outlined in the Education Act itself and in detailed policies and guidance documents. Policies and procedures on controversial issues in schools, making complaints and positive planning frameworks such as the School Community Charter will be referenced, we understand, in expert submissions from the sector.⁴ Proposals in the Bill would add yet another layer of hindrance and bureaucracy to this existing apparatus with some parents ceded privileged status and others excluded.

Parents inclined to exert greater control over their children's schooling profit from Australia's long standing subsidies underpinning parental choice of schools. In contrast to many similar and educationally better performing countries, the Australian school system fosters numerous publically funded private schools organised around religious frameworks.

In a major concession to these schools, New South Wales allows them to discriminate against LGBTQ students and teachers (not just in religious schools). Divorced teachers, teachers in a de facto relationship and those who offend the 'religious sensibility' of the school community - especially women teachers - have suffered serious discrimination.⁵ A similar exemption exists under the Commonwealth Sex Discrimination Act. WEL opposes these exemptions.

Health Safety and Well Being <https://policies.education.nsw.gov.au/policy-library/policies/pd-2004-0020/pd-2004-0020-01.pdf>

³See the excellent materials and framework at <https://education.nsw.gov.au/student-wellbeing/whole-school-approach/wellbeing-framework-for-schools#Wellbeing2>

⁴ See footnote 3.

⁵ See the case studies in the Independent Education Union of Australia submission to the consultation on the first draft of the Commonwealth Government's Religious Discrimination Bill <https://www.ag.gov.au/rights-and-protections/publications/submissions-received-religious-freedom-bills-first-exposure-drafts-consultation>



It is also the case that public schools can fall short in fostering more broadly defined family relationships, especially in relation to Aboriginal students and their communities, where involvement of extended families, Elders and inspiration from community knowledge can profoundly enrich student learning in the context of language, culture, history and country.

This Bill would allow parents whose ‘matters of parental primacy’ deny Aboriginal culture, history, language and country to categorise such benchmark models of Aboriginal schooling as ‘ideological’ and subvert a school’s adoption of them and the associated curriculum support.

WEL acknowledges the strong research evidence that positive and close school /parent/community relationships support great teaching outcomes and student learning. We understand the focus of the Education Act and the Bill is on ‘parents’ (including care givers and guardians as specified in the Act) but we believe that education legislation and policy would be better served through reference to broader and more realistic notions of families and communities.

Such a terminological shift would recognise that children’s ‘family relationships include people who are related to one another through blood, marriage or de facto partnerships, adoption and fostering relationships, and sibling and extended family relationships. It would include the full range of kinship ties in Aboriginal and Torres Strait Islander communities, extended family relationships, and....families within lesbian, gay, bisexual, transgender and intersex communities’.⁶

The legal implications of such changes would need to be explored further.

Some Specific Issues

The Bill contradicts Australia’s international commitments

The Bill, if adopted, would embarrass Australia internationally. Australia’s has committed to the 2030 Agenda of the Sustainable Development Goals, specifically ‘Sustainable Development Goal 4: ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ and target 3.7 which calls for countries ‘to ensure universal access to sexual and reproductive health-care services, information and education by 2030’.⁷

The main international human rights treaty on children’s rights is the Convention on the Rights of the Child which Australia ratified in December 1990. The CRC incorporates all the general rights set out in other treaties that apply to everyone, as well as the special rights that apply to

⁶See <https://www.facs.nsw.gov.au/domestic-violence/about/what-is-dv> The quotation is based on the DVNSW report *It Stops Here*.

⁷ Australian Government. Report on the implementation of the Sustainable Development Goals. Canberra; 2018.



children. Passage of the Bill could result in Australia contravening clauses 28 and 29 in the Convention concerning the Rights of the Child to Education⁸.

Respectful relationships

Rigid gender roles and stereotyped constructions of masculinity and femininity are key drivers of violence against women.⁹ A large body of academic research shows traditional attitudes towards gender are one of the strongest predictors of attitudes that support this violence.¹⁰

A governing principle of the Federal Government's Fourth National Plan 2019-2023 for reducing Violence Against Women and their Children is that 'we must address gender equality to stop violence' and that 'women will never be safe if they are not equal'. The Plan's fifth national priority is to 'promote healthy and safe relationships and build gender equitable values through initiatives for children and young people'.¹¹ There is ample evidence that school based programs are integral to the long term primary prevention of domestic violence in Australia. In NSW, PDHPE (Personal Development Health and Physical Education) teaching and learning programs support NSW implementation of the Fourth National Plan. They aim to prepare young people for healthy, fulfilling adult lives, including respectful and equal relationships. Adolescence is a crucial period for the formation of respectful, non-violent relationships both now and in later life.

The teaching of respectful relationships, including recognising and preventing forms of abuse and domestic violence, is an integral part of the K–6 and Years 7–10 (PDHPE) curriculum in NSW.

Under this Bill, parents whose values emphasise the intrinsic authority of men over women and children in families and the necessary submission of wives to husbands, could well see this key learning area as trespassing on 'matters of parental primacy' including parents' 'moral and ethical values' and 'matters of personal well-being and identity including gender and sexuality' as variously described in the Bill. According to Section 17D of the Bill 'Objection to teaching on Matters of Parental Primacy: No child at a government school is to be required to receive any instruction in matters of parental primacy if the parents of the child object to the child receiving that instruction'.

⁸ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁹ 2 Our Watch, ANROWS and VicHealth, (2015). Change the story: A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne, Australia.

¹⁰ Ibid note 8

¹¹ https://www.dss.gov.au/sites/default/files/documents/08_2019/fourth_action-plan.pdf



Moreover, there is a danger that perpetrators of domestic violence could seek to withdraw their children from such lessons under the guise of 'matters of parental primacy' when in fact their motivation is rather to conceal and inhibit reporting by a child or young person in their family.

Parents could not only withdraw their children from classes in this learning area, but the Bill's provisions to amend the Education Standards Authority Act (2013) could seek to intervene in the design and content of the curriculum itself.¹² Under the Bill's proposed amendment to the Act's Section 11 Principal Objectives of the Authority (1)d, the Bill provides for replacement of the following clause:

(c) to ensure that each of the following matters under the education and teaching legislation is developed, applied and monitored in a way that improves student learning while maintaining flexibility across the entire school education and teaching sector:

- (i) the school curriculum,
- (ii) forms of assessment,
- (iii) regulatory standards for schools,
- (iv) teaching quality and professional standards.'

.... by an amended version:

(d) to ensure that:

- (i) the school curriculum, (ii) forms of assessment, (iii) regulatory standards for schools, (iv) teaching quality and professional standards, under the education and teaching legislation are developed, applied and monitored to ensure that school education does not: (v) derogate from the primary responsibility of parents in matters of parental primacy; or (vi) include any teaching of gender fluidity. (Our emphasis)

The power that this Bill confers on small groups of parents to censor and distort curriculum has immense implications for almost all school learning areas, extending well beyond PDHPE and including Science, History, English and Social Sciences.

The NSW public education system would become an international laughing stock, where even standard scientific knowledge, subjects for study based on historical scholarship and classic works of literature would potentially come under the scrutiny of parental primacy monitors.

Everyday teaching based on evidence based, well researched subject disciplines is a key foundation of delivering on the promise in the NSW Education Act that public schools will deliver a *high* standard of education. The Bill would serve to remove this foundation and break that historic promise.

¹² See amendments set out in Schedule 2 of the Bill Amendment of Education Standards Authority Act 2013 No 89



Gender Fluidity

Over sixteen of the amendments proposed by the Bill in relation to 'gender fluidity' are attempts to eliminate recognition of trans, non-binary and other gender non-conforming students in public schools and punish teachers and indeed any staff or volunteers who recognise them. The Bill partly defines gender fluidity as the *'belief that human gender is socially constructed, rather than being equivalent to a person's biological sex'*.

Prohibiting references to gender identity as something that we can adapt and modify would undermine one of the fundamental concepts supporting primary intervention education intended to help prevent behaviour leading to sexual and domestic violence.

As we discuss in the section of this submission on sexual relationships and sexual health, there is overwhelming evidence that parents, families and communities are comprehensively failing to develop understanding of the damage wrought when boys and young men assume narrow and 'militant' masculine identities, involving sexual entitlement over others and where young women feel powerless to refuse consent.

WEL understands that gender as an aspect of socially constructed identity that human beings can themselves modify, is discussed in the PDHPE learning area, particularly in relation to early intervention education programs about sexual harassment, assault and consent.

The Bill could also potentially shut down aspects of teaching in subjects such as History and English, where there were parental objections to a perceived 'ideology of gender fluidity' or simply to recognition that gender identities and relations can change or vary.

These subjects may include accounts of changes in the ways men and women have lived and expressed themselves and the ways gender constraints have loosened and transformed.

WEL is aware of a boys' school serving one of Sydney's very conservative religious communities where teachers who themselves belong to the schools' major faith community use fiction and poetry to imaginatively explore LGBTI+ issues, as well as the complex experiences of 'being different'. Teachers and students report that such class room experiences prepare students for the wider modern world and increase students respect and tolerance for each other's differences, including sexual and gender differences.

Nor is it clear how 'matters of parental primacy' could realistically include parents' capacity to control or determine their children's or adolescents' sexual orientations, or even the extent to which parents can dictate their children's conformity to gender or sexual 'stereotypes' as the Bill seems to promise.

Moreover where parents or other authorities attempt such control, some young people inevitably suffer immense psychological damage.



WEL notes the detailed advice and guidance outlined in the Department of Education's Legal Bulletin No 5 Transgender students in schools.¹³ The Bulletin states that 'all students including those who identify as transgender have a right to be treated equitably and with dignity' and recommends a 'proactive approach to the development of positive school environments in which every student is respected and valued'. Additionally it warns 'schools have a legal duty to protect students from a foreseeable risk of harm and to do what is reasonably practicable to ensure their safety'.

Provisions in this Bill would nullify all of the detailed guidance provided in this official document, as well as contravene the Commonwealth Sex Discrimination Act and NSW Anti-Discrimination legislation.

We are aware of calls to amend the NSW anti-discrimination legislation, together with the Births, Deaths and Marriages Act to better recognise and protect trans and other gender non-conforming people and will consider submissions, should there be consultation, on draft legislation. We also anticipate the outcomes of the Australian Law Reform Commission's inquiry into the exemptions under the Sex Discrimination Act.

Bullying and gender

The NSW Department of Education's 'Bullying of Students - Prevention and Response Policy'¹⁴ recognises that 'Bullying behaviour can also involve intimidation, victimisation and harassment, including that based on sex, race, religion, disability or sexual orientation, both online and offline'.

The policy and associated curriculum materials recommends close involvement of parents and families in school programs to prevent bullying.

A supporting document 'Biased Based Bullying' advises schools and teachers that:

It is important that when bias-based bullying occurs, the bias is recognised, named and challenged. For example it may be stated that the bullying is based on racism, sexism or homophobia with discussion on why this behaviour is offensive. Consult with the affected students when planning how the situation will be managed, and regularly follow up progress.¹⁵ (Our emphases)

Research has long indicated that gender diverse students and those perceived to diverge from the narrow strictures of gender identity norms and categories are more likely to be victims of

¹³ <https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/bulletin-55-transgender-students-in-schools>

¹⁴ <https://policies.education.nsw.gov.au/policy-library/policies/pd-2010-0415>

¹⁵ Educators Bias Based Bullying NSW Department of Education
<https://policies.education.nsw.gov.au/policy-library/related-documents/bias-based-bullying-factsheet.pdf>



bullying, abuse, sexual abuse and other forms of assault and are at a higher risk of depression, isolation and suicide.¹⁶

The Bill would allow the withdrawal of accreditation from teachers who, following the Education Department's policy on Bullying, identify as homophobic or sexist the bullying of, for example, a transgender child, a boy perceived by his peers as weak or effeminate, a young lesbian. By withdrawing accountability from students who indulge in biased bullying it would make schools immeasurably more dangerous places for gender non-conforming children and young people.

Sexual relationships and sexual health

Sexuality and Sexual Health Education is a mandatory component of the PDHPE Curriculum in NSW schools.¹⁷ However under the Controversial Issues procedure in NSW Public schools:

The school has a responsibility to inform parents, prior to the occasion, of the specific details of the program, so that parents have time to exercise their rights of withdrawing their child from a particular session on certain controversial issues. In this regard, a parent's wish must be respected.

By making sex education a 'matter of parental primacy' this Bill would reinforce the already existing capacity of parents to deny their children access to this area of learning, and would empower some parents to seek to alter the curriculum itself. They would also be able to intervene in a schools' delivery of the curriculum via monitoring from the Standards Authority and reporting to the Teachers Accreditation Agency.

The current context in NSW where alarming evidence is emerging of sexual assault and violence practiced by young school aged men against young women makes this component of the Bill (and indeed the Department of Education exemption policy) especially disturbing.

As a senior private school principal stated recently:

... for those who conveniently turn to schools and go 'what are you doing about it?' I can tell you. We are busting a gut trying to ensure schools are allowed to teach about such matters rather than having them being constrained by the personal but public opinions of politicians, or criticised when wanting to educate about sexuality. You cannot have it both ways.¹⁸

¹⁶ See Hillier L, Jones T, Monagle M, Overton N, Gahan L, Blackman J, et al. *Writing Themselves in 3: The Third National Study on the Sexual Health and Wellbeing of Same Sex Attracted and Gender Questioning Young People*. Melbourne; 2010 and the follow up Hill A, Lyons A, Jones J, McGowan I, Carman M, Parsons M, et al. *Writing themselves in 4: The health and wellbeing of LGBTQA+ young people in Australia*. Melbourne; 2021.

¹⁷ See Sexuality and Sex Education in NSW schools at [5.-sexualityed-fs2017acc-s0v5ui.pdf](#)

¹⁸ Scott, Briony 'Schools can't end the scourge of sexual assault, adults behaving like adults can' SMH feb 24 2021



A recent report from the Australian Institute of Health and Welfare on Sexual Assault in Australia shows that women in their late teens are more likely than others to be the victims of sexual assault while young men of the same age group are most likely to be perpetrators.¹⁹

In 2018, police recorded roughly 18,300 sexual assaults against victims who were aged 15 and over, but that figure only includes those reported to police. The sexual assault rate was higher for those aged 15–19 (455 assaults per 100,000) than any other age group. Overall, the rate of sexual assaults reported to police was seven times higher for women compared with men.

There is also substantial evidence that many young people resort to pornography for sexual information and that this then informs their attitudes.

According to an ABC investigation into the use of pornography in Australia, the estimation is that more than 90% of boys and 60% of girls have seen online pornography, and that 88% of the most popular pornography includes physical aggression.²⁰ WEL believes that access to online pornography sites should be age verified along the same lines already followed with access to online gambling sites.

In WEL's view, rather than further weakening and compromising school based sex and sexuality education as this Bill seeks to do, NSW needs to strengthen its design and provision and mandate it for all children as has recently been done in England.

Education around consent and sex must start, in an age-appropriate way, from early childhood in every school, and it must be mandatory, adequately resourced and based on expert advice and best teaching practice.

¹⁹ *Sexual Assault in Australia* Australian Institute of Health and Welfare Australian Government 2020 <https://www.aihw.gov.au/reports/domestic-violence/sexual-assault-in-australia/contents/summary>

²⁰ <https://www.abc.net.au/news/2019-01-16/australias-porn-problem/10668940?nw=0>



WEL Recommendations to the Inquiry

WEL recommends:

That the Inquiry recommend that the Bill not proceed as it will undermine the delivery of quality education in NSW and impose an impossible and unjustified administrative burden on the education system. If passed, it will undermine the critical role schools need to play in developing children and young people's understanding of and capacity to prevent bullying, sexual assault and domestic violence, and to develop their capacity for relationships based on equality, consent and respect;

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