

**Submission
No 58**

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

Organisation: Public Health Association of Australia (PHAA)

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Legislative Council Portfolio Committee No. 3 - Education
Parliament of New South Wales
Macquarie Street, Sydney 2000
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Attn: Anthony Hanna, Principle Council Officer

28 February 2021

Dear Committee Members,

Comments on the *Education Legislation Amendment (Parental Rights) Bill 2020 (NSW)*

The Public Health Association of Australia (PHAA) welcomes the opportunity to provide input to the consideration by the Committee of the *Education Legislation Amendment (Parental Rights) Bill 2020*.

PHAA is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia, and seeks to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

The Bill

The Bill's long title is "An Act to amend the Education Act 1990, the Education Standards Authority Act 2013 and the Teacher Accreditation Act 2004 to provide that schools must recognise that parents are primarily responsible for the development and formation of moral and ethical standards and social and political values in their children, including an understanding of personal identity and questions of gender and sexuality and to prohibit schools, teachers, and training courses from teaching gender fluidity and for other purposes".

The explanatory note provides further details, that the object of the Bill is, as well as the above, includes to:

- Provide that schools should not usurp the role of parents – that teaching in relation to core values is to be strictly non-ideological and should not advocate or promote dogmatic or polemical ideology that is inconsistent with the values held by parents of students;
- Require schools at the beginning of each academic year to consult with parents about courses of study that will include teaching on core values;
- Allow parents to withdraw students from instruction on core values where parents object to the particular teaching on these matters of parental primacy;
- Require the NSW Education Standards Authority to monitor the compliance by government schools with the requirements to not teach gender fluidity and to recognise parental primacy in relation to core values
- Ensure that the school curriculum and teaching standards are developed and applied in a way which does not teach gender fluidity and which recognises the primacy of parents in relation to core values

- Requires all approved teacher education courses recognise the primacy of parents in relation to core values and do not teach gender fluidity and ensure that it is a condition of the accreditation of teachers and other staff that they recognise the primacy of parents in relation to core values and that they do not teach gender fluidity.

Misuse of terminology the bill

This bill is an attempt to legislate specific ideological beliefs about concepts related to human attributes. The bill refers to 'biological sex' and 'gender'; it is important to note at once that these are different concepts; the words refer to different things. Yet another concept is 'sexuality', which although not directly addressed in the Bill is clearly of interest to the Bill's intent. These are all terms for normal, inherent aspects of our human condition. However we should note that each of these terms connote a variety of characteristics; they are clearly more than simple binary options, such as 'male' and 'female' alone. These terms also have wider controversies of meaning swirling around them.

The basic issues and facts surrounding these terms are of interest to all people, and policies and laws relating to them have the potential to dramatically affect people's wellbeing, enjoyment of personal freedoms, and health. There is a clear public interest in all people being able to access scientific information, evidence and personal advice relating to these issues, and that includes a public interest in young people being educated regarding these human attributes from as early an age as is useful.

It is also important to separate scientific knowledge and evidence surrounding these attributes from beliefs (religious or otherwise) and ideologies. It is clearly entirely inappropriate that beliefs and ideologies be imposed on anyone in the community by way of legislation.

This Bill, however, is entirely incompatible with those principles. The bill –

- would create a bare (and ideological) statutory 'definition' of the term 'gender fluidity', which would clash with the complex mix of meanings mentioned above
- would prohibit teachers and educational institutions from acting contrary to that invented 'definition'
- would impose ideological tests on the accreditation of individual teachers, by reference to their willingness to accept and act on that 'definition'

The Bill proposes to ban “the teaching of gender fluidity”, and the “definition” of “gender fluidity” supporting this prohibition appears as follows:

“gender fluidity means 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.” (Schedule 1[1])

But the definition of 'gender fluidity' offered in this Bill is simply wrong. To start with, it is incorrect to describe 'gender fluidity' as a “belief”. Further, what is actually proposed in the Bill is arbitrary, itself represents the beliefs of a specific ideology, and is not compatible with the broader use of the term in the public arena, nor with [definitions](#) used by Australian health authorities, such as:

“The words gender and sex are often used interchangeably, but they have different meanings; sex tends to refer to biological differences, while gender more often refers to cultural and social differences, and sometimes includes a broader range of identities than the binary of male and female” (Australian Government Department of Health)

In fact, gender fluidity and other concepts proposed to be restricted in educational settings by this Bill are solidly based on current scientific knowledge and evidence about human physicality, gender and sexuality from the biological, medical and social science perspectives. Those concepts are not mere ‘beliefs’ as the Bill suggests – in contrast for example to religious beliefs which are based on faith. Oddly, this Bill itself creates what it criticises – a belief-based usage of the term. ‘Gender fluidity’ in its wider meaning is not mentioned. Overall, the proposed definition has the effect (and apparently the intention) of broadening the impact of the legal restrictions created in the remainder of the Bill.

We therefore disavow the proposed definition of gender fluidity included in the Bill, and for the remainder of our comments we will use the term intending its more accepted meaning, which importantly connote the meaning that the difference between sex and gender is indeed socially constructed.

Legislating control over teaching

The Bill would impose a number of novel legal restrictions on educational institutions, teacher accreditation, teachers as individuals, and the practice and content of teaching. These outcomes would be seriously harmful to educational goals, and also to the lifelong wellbeing of students.

To prevent teaching of, or even mention of, these evidence-based topics in schools will set students back in learning and growth, leaving them underprepared to learn and function in the Australian society where these topics are openly discussed.

Furthermore, by banning the inclusion of evidence-based information in teachers’ training, professional development and accreditation, this Bill would result in the elimination of teachers’ opportunity and responsibility to learn about important aspects of human life which they will need to fully educate their students.

If passed, this Bill will result in teachers being inadequately informed and trained in important aspects of human attributes of gender, sexuality and related matters, and be less able to provide much needed education and support to students. In particular, teachers would be less equipped to assist students who are realising their own gender and sexuality identity, including those who are being bullied and discriminated against due to their gender and/or sexuality. By including education on gender and sexuality in schools, stigma associated with diverse genders and sexualities will be reduced through these identities being normalised.

Overall, the alleged “protection” which this Bill claims to provide will in fact result in deleterious impacts on some of the most vulnerable students.

Legislating a concept of ‘parental primacy’

In addition, the Bill would place parents in a position of legal dominance in respect of a specified group of issues, to the exclusion of the rights of the affected children, as well as the roles and rights of teachers, and of others seeking to have open debate over social issues.

The Bill proposes a “definition” of “matters of parental primacy”, as follows:

“matters of parental primacy means, 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.” (Schedule 1[1])

But this is not a *definition* of the meaning of terminology, it is a legislative *declaration* that on the identified subject matter, political dominance is granted to a class of persons (namely, the relevant parents). It is also both broad and uncertain in its scope.

Questions of who has 'primacy' over information, ideas and learning on this subject matter are unavoidably complex and controversial, and in the particular case of children will unavoidable change over time as each child develops, and play out differently for different children (and indeed for different parents). It is impossible to legislate for a uniform approach to such subject matter. Indeed, any attempt at such legislation would need to balance the rights of the parents with the rights of the children, especially those with sexuality and/or gender diversity. It is wholly inappropriate to use legislation to create a dominant legal position for parents. There is ample evidence of lasting negative impacts from gender/sexuality oppression in childhood on a person's wellbeing into adult life.

This Bill focuses heavily on an alleged threat to 'parental primacy', but that primacy is itself a normative proposition, not without controversy. The Bill's very narrow focus on excessive restrictions and control over the teaching of issues surrounding human gender and sexuality is highly questionable, and does not reflect the belief of the general population of NSW or Australia.

Divisiveness

The Bill is also seriously socially divisive. If enacted, this Bill will only serve to increase disharmony, hatred and intolerance, which work against a healthy spirit of the nation.

Conclusion

From the public health perspective, this Bill goes directly against evidence-based knowledge and practices, and will have deleterious effects on physical and mental health and wellbeing both among students and teachers.

It follows that this Bill should not be enacted.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Yours Sincerely,

Terry Slevin
Chief Executive Officer
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Dr Patrick Harris
President, NSW Branch
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