

**Submission  
No 63**

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

**Organisation:** Amnesty International Australia

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Submission to the  
**Inquiry into the *Education Legislation Amendment (Parental Rights) Bill 2020 (NSW)***

3 March 2021

Submitted by  
**Amnesty International Australia**

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## **Table of Contents**

<b>About Amnesty International</b>	<b>3</b>
<b>Summary</b>	<b>4</b>
Recommendations	5
<b>International Legal Human Rights Frameworks</b>	<b>6</b>
Education	7
Discrimination	8
Freedom of thought, conscience and religion	8
Freedom of expression	9
<b>Protection of the right to education in Australia</b>	<b>10</b>
<b>Education Legislation Amendment (Parental Rights) Bill 2020</b>	<b>11</b>
Ensuring children have access to their right to education	11
Supporting trans and gender diverse students	12
Teaching about gender	13
<b>Including people born with intersex variations</b>	<b>13</b>
<b>Scrutiny of legislation</b>	<b>14</b>
<b>Conclusion</b>	<b>15</b>

## **About Amnesty International**

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief and does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience - people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation, gender identity or intersex status. Amnesty International recognises the right to freedom of thought, conscience and religion as set out in Article 18 of the UDHR.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status. Amnesty International calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors. Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We work both publicly with our supporters and privately with families and lawyers in determining the most strategic approach to bring about change at any given time and within the consent which we are given. We then mobilise our large supporter base to take actions, individually and in their community.

## 1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to Portfolio Committee No.3 - Education's inquiry into the *Education Legislation Amendment (Parental Rights) Bill 2020* (the bill).
- 1.2 Amnesty International campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, and we advocate for states to fulfil their obligations to prohibit racial and religious vilification.
- 1.3 Amnesty International notes the increase in organised and coordinated divisive political and media discourse around the LGBTQIA+ community, in particular, the trans and gender diverse community, during and following the marriage equality debate in Australia.
- 1.4 Amnesty International rejects the objectives of the Bill. Trans and gender diverse children and young people exist. They have a right to be respected, included and supported in school and to see themselves reflected in curriculum. Similarly individuals or groups of parents should not be in a position to significantly dictate curriculum to the detriment of students' education.
- 1.5 Trans and gender diverse students should be given the support they need to thrive at school. Teachers, counselors and other staff and volunteers should be able to provide that support and fulfill their duty of care to students without fear of being disciplined or fired.
- 1.6 Children should be taught about sexual orientation and gender identity in schools, students should be taught differing views on issues such as climate change, Australian history, the experience of people with different religious beliefs or culture, and LGBTQIA+ people, and trans and gender diverse students should be given the support they need to thrive at school (without fear of teachers and staff being fired).
- 1.7 The Bill inaccurately defines and uses stigmatising language to describe people born with intersex variations. Schools must provide a respectful, supportive and accessible environment for students born with intersex variations.
- 1.8 Australian governments have an obligation under international law and standards to protect lesbian, gay, bisexual, transgender and gender diverse, queer, intersex and asexual (LGBTQIA+) people, including children.<sup>12</sup> Amnesty International submits that this Bill violates such obligations.
- 1.9 Amnesty International primarily submits that the Bill contravenes the government's obligation to provide an education for all children. It also violates childrens' rights including to anti-discrimination, freedom of thought, conscience and religion, and freedom of expression.<sup>3</sup>
- 1.10 Amnesty International regrets that this bill has once again put the lives of vulnerable trans and gender diverse children in the media spotlight. The Bill also uses stigmatising and inaccurate language about people born with intersex variations. The ongoing public dissection of trans and gender diverse children's lives and the stigmatising of people with intersex variations is harmful. The NSW government must take this into account when legislating in this space. More in-depth

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<sup>1</sup> Universal Declaration on Human Rights, Article 2

<sup>2</sup> Convention on the Rights of the Child, Article 3(1)

<sup>3</sup> Convention on the Rights of the Child, Article 3(1)

scrutiny of legislation in regards to compatibility with human rights, before public consultation, is needed.

## **Recommendations**

Amnesty International recommends that:

- (1) Portfolio Committee No.3 - Education rejects the *Education Legislation Amendments (Parental Rights) Bill 2020*.
- (2) The New South Wales Department of Education develop an 'access and equality' policy for LGBTQIA+ children.
- (3) The New South Wales government legislate a Human Rights Act (HR Act) for New South Wales, to ensure that fundamental rights are protected and appropriately balanced. The objective of the HR Act or Charter should contain as a minimum: right to recognition and equality, right to life, freedom of movement, right to privacy and reputation, right to religion and belief, rights to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practice religion and use their language), right to education, right to access health care and the rights of children in the criminal justice process.
- (4) The New South Wales government begins a process to legislate the creation of a parliamentary committee that scrutinises all bills and legislative instruments, for compatibility with human rights.

## 2. International Legal Human Rights Frameworks

2.1 Articles 1 and 2 of the UDHR<sup>4</sup> set out the fundamental principles underpinning all human rights.

2.2 Article 1 states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

2.3 Article 2 states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.4 Article 2 of the ICCPR states in similar terms:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.5 It is now well established that phrase 'other status' has been interpreted by human rights treaty bodies to include attributes such as age, disability, sexual orientation, gender identity or sex characteristics.

2.6 Article 7 UDHR and Article 26 ICCPR<sup>5</sup> provide that all people are equal before the law and entitled without discrimination to equal protection of the law. Article 26 ICCPR requires State Parties, including Australia, to prohibit discrimination and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' Article 27 ICCPR provides particular protection for ethnic, religious, or linguistic minorities to 'enjoy their own culture, to profess and practise their own religion or to use their own language'.

2.7 The Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles) and the Yogyakarta Principles plus 10 state that sexual orientation, gender identity, gender expression and sex characteristics are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse<sup>6</sup>. These Principles call on States to take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation, gender identity, gender expression or sex characteristics to hold and practise

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<sup>4</sup> Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A(III), 10 December 1948 (UDHR).

<sup>5</sup> International Covenant on Civil and Political Rights, United Nations, Treaty Series, (1966) vol.999, p.171 (ICCPR).

<sup>6</sup> *The Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2007, Principle 2; *The Yogyakarta Principles plus 10 - Additional principles and State obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement The Yogyakarta Principles*, 10 November 2017, Preamble.

religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or imposition of beliefs<sup>7</sup>.

- 2.8 Human beings have multifaceted identities and will possess, at any time, more than one of the statuses referred to in Article 2 UDHR, and that these statuses may change over time.

## Education

- 2.9 The UN Committee on Economic Social and Cultural Rights has stated that the right to education requires that functioning educational institutions and programs have to be available in sufficient quantity within a country. Education must be within safe physical reach, either by attendance at some reasonably convenient geographic location or via access to a 'distance learning' program. All institutions and programs are likely to require appropriate physical facilities, trained teachers receiving domestically competitive salaries, teaching materials, libraries and computer facilities.<sup>8</sup>
- 2.10 The right to education is contained in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which importantly states that primary and secondary education must be available and accessible to all.
- 2.11 The right to education is also referred to in articles 5(e)(v) and 7 of CERD, articles 10 and 14(2)(d) of CEDAW, articles 13, 17, 28 and 29 of the CRC and articles 9, 21, 24 and 26 of the Convention on the Rights of Person with Disabilities (CPRD).
- 2.12 A number of provisions require measures that provide for education in human rights. ICESCR article 13(1) requires that education shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. The CRC requires that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.<sup>9</sup>
- 2.13 The Yogyakarta Principles and Yogyakarta Principles plus 10 provide that States 'shall ensure inclusion of comprehensive affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula' taking into consideration the evolving capacity of children and in teacher training and continuing professional development.<sup>10</sup> The provision of education of this nature does not, in Amnesty International's view, conflict with the liberty of parents to provide 'to ensure the religious and moral education of their children in conformity with their own convictions' at home or in their religious communities, as provided by Art 18(4) of the ICCPR.
- 2.14 Under article 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights

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<sup>7</sup> *Yogyakarta Principles*, Principle 21

<sup>8</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 13: the right to education*, 1999:

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx)

<sup>9</sup> CRC Article 29

<sup>10</sup> Yogyakarta Principles, Yogyakarta Principles plus 10, Principle 16, I and J.



recognised in ICESCR. Under article 2(2), states have an obligation of immediate effect to exercise the Covenant with discrimination of any kind.

## **Discrimination**

2.15 The ICCPR does not define 'discrimination' and does not explain what would constitute 'discrimination.' The United Nations Human Rights Committee's<sup>11</sup> view is that, in light of definitions of discrimination in the Convention on the Elimination of All Forms of Racial Discrimination<sup>12</sup> and in the Convention on the Elimination of All Forms of Discrimination Against Women<sup>13</sup>, discrimination in the ICCPR 'should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.'<sup>14</sup>

2.16 A similar definition of 'discrimination' is found in Article 2(2) of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (Declaration on Religion and Belief).<sup>15</sup>

## **Freedom of thought, conscience and religion**

2.17 The rights to freedom of thought, conscience and religion are enshrined in Article 18 UDHR and Article 18 ICCPR.

2.18 The right to freedom of thought, conscience and religion also includes theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief<sup>16</sup>.

2.19 It should be noted that Article 18 is one of the articles in the ICCPR with respect to which no derogations are permitted (see Article 4(2) ICCPR). The extent of any limitations on the right to manifest one's religion or belief is set out in Article 18(3) above.

2.20 Amnesty International recognises the distinction between the absolute right to freedom of thought, conscience and religion (including a non-religious belief or a rejection of religious belief) and the right to manifest such a belief. While the right to freedom of thought, conscience and religion is absolute, in international law, the freedom to manifest one's religion or beliefs may be subject to legitimate limitations.<sup>17</sup> Such limitations must be prescribed by law and be necessary for the protection of:

- national security or public order (or public safety in the case of freedom of association);

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<sup>11</sup> The Human Rights Committee is the body of independent experts that monitors the implementation of the ICCPR by States (see Part IV ICCPR).

<sup>12</sup> CERD article 1

<sup>13</sup> CEDAW article 1

<sup>14</sup> Human Rights Committee, General Comment No. 18: Non-Discrimination, 37th session, (1989), para 6,7.

<sup>15</sup> United Nations General Assembly UN Doc. A/RES/36/55 (adopted 25 November 1981) (Declaration on Religion and Belief).

<sup>16</sup> See Article 18(3) ICCPR, and UN Human Rights Committee, General Comment 22 (48) CCPR/C/21/Rev.1/Add.4 27 September 1993 (General Comment 22).

<sup>17</sup> See General Comment 22, para 3,4; Special Rapporteur, *Report of the Special Rapporteur on freedom of religion and belief*, 43rd sess, UN Doc A/HRC/43/48 (27 February 2020), para 60 (2020 Report).

- public health or morals; or
- the rights and freedoms of others<sup>18</sup>.

2.21 The Special Rapporteur on freedom of religion or belief, states that the limitations on manifesting freedom of religion or belief is that this freedom must not be used for ends that are inconsistent with the United Nations Charter or relevant human rights instruments. Article 30 UDHR and Article 5 ICCPR state that no human right may be invoked to destroy another human right.<sup>19</sup>

2.22 Interpretive principles relating to limitations referred to in the ICCPR are set out in the Siracusa Principles, with the following being the most pertinent with respect to Article 18(3):

9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 18, paragraph 1.

10. Whenever a limitation is required in terms of the Covenant to be “necessary,” this term implies that the limitation:

- (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant;
- (b) responds to a pressing public or social need;
- (c) pursues a legitimate aim;
- (d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the State.

2.23 With respect to the phrase ‘prescribed by law’ in Article 18(3), Siracusa Principle 16 states that laws ‘imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.’

## **Freedom of expression**

2.24 Individuals also enjoy the protection of the right to freedom of expression and the right to freedom of association (Articles 19 and 22 of the ICCPR).

2.25 Freedom of expression is a fundamental human right. It is essential to, and interrelated with, the realisation and exercise of all human rights. Every human being has the right to hold opinions, receive information and express themselves freely. Like all human rights, freedom of expression must be protected and balanced alongside other rights. Governments may impose some legitimate restrictions on certain forms of speech, as long as they are demonstrably necessary to ensure respect for the rights of others, such as the right to be free

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<sup>18</sup> ICCPR Article 18(1) and (3).

<sup>19</sup> 2020 Report, para 61.

from discrimination, or for the protection of certain specified public interests<sup>20</sup>. Any such restrictions on freedom of expression must be prescribed by law and must conform to the strict tests of necessity and proportionality<sup>21</sup>. Importantly, governments also have a positive obligation to prohibit advocacy of national, racial or religious hatred<sup>22</sup>.

### 3. Protection of the right to education in Australia

3.1 There is no Commonwealth legislation explicitly enshrining the right to education. Australia has positive obligations, under ICESCR and the CRC, to ensure that all children have access to an education.

3.2 In New South Wales, the *Education Act 1990* (the Education Act), establishes the right of every child to receive an education, the State's duty to ensure students receive high quality education through the provision of public education, and a compulsory schooling obligation upon parents to ensure students of compulsory school age are enrolled and in attendance at a government school or a registered non-government school, or registered for home schooling.

3.3 The New South Wales' enrolment policy<sup>23</sup> also makes it clear that:

In accordance with anti-discrimination legislation, no student will be discriminated against including on the grounds of their race, religion, gender, age, ethnicity, language background, disability, caring responsibilities, sexual orientation, transgender status and marital or domestic status, when enrolling in NSW Government schools.

3.4 The New South Wales government has 'Access and equality' policies for Aboriginal students, students from a culturally or linguistically diverse background, students with disabilities, students with learning difficulties, gifted students, and students in out of home care. It does not have an access and equality policy for LGBTQIA+ children.

3.5 The NSW Department of Education's '*Legal Bulletin 55 - transgender students in schools*', contains some equity and accessibility for trans and gender diverse students, but this is not entrenched in a policy.

**3.6 Amnesty International recommends that the New South Wales Department of Education develop an 'access and equality' policy for LGBTQIA+ children.**

3.7 In regards to *what* children are taught in schools, governments have an obligation to promote understanding, tolerance and friendship<sup>24</sup> through its curricula, and that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.<sup>25</sup>

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<sup>20</sup> ICCPR Article 19(3).

<sup>21</sup> United Nations Human Rights Committee, *General Comment 34: Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34, 12 September 2011, para. 22.

<sup>22</sup> ICCPR Article 20(2).

<sup>23</sup> New South Wales Government, *Enrolment of Students in NSW Government Schools*, <https://policies.education.nsw.gov.au/policy-library/policies/pd-2002-0006>

<sup>24</sup> ICESCR 13(1)

<sup>25</sup> CRC Article 29

## 4. Education Legislation Amendment (Parental Rights) Bill 2020

- 4.1 Amnesty International's strong belief is that everyone in New South Wales would benefit from a Human Rights Act which fosters understanding and respect for human rights and provides tools to challenge injustice.
- 4.2 Amnesty International knows that the only feasible way to protect the rights of people to education, whilst balancing the rights of people to express their freedom and religion is a Human Rights Act. A Human Rights Act would protect the rights of all persons in New South Wales within a framework that ensures that all people's rights are universal and indivisible. In the situation where one person's access to their human rights impacts another person's ability to access their rights, a Human Rights Act would fairly balance these rights.
- 4.3 Amnesty International notes that the UN Human Rights Committee, in its review of Australia's compliance with the ICCPR, recommended in November 2017 that Australia 'adopt comprehensive federal legislation giving full effect to all [ICCPR] provisions across all state and territory jurisdictions.'<sup>26</sup> Amnesty International's view is that all Australian states that have not yet done so, should also pass legislation creating a Human Rights Act.
- 4.4 Amnesty International recommends that the Government legislate a Human Rights Act for New South Wales, to ensure that fundamental rights are protected and appropriately balanced. The objective of the Human Rights Act should contain as a minimum: right to recognition and equality, right to life, freedom of movement, right to privacy and reputation, right to religion and belief, rights to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practice religion and use their language), right to education, right to access health care and the rights of children in the criminal justice process.**

### Ensuring children have access to their right to education

- 4.5 The Bill introduces a dramatic change to the way parents interact with the school curriculum. Proposed section 17D of the *Education Act* states that no child at a government school is to be required to receive any instruction if the parent objects to that instruction. This gives parents or guardians the power to restrict their child's access to education, in contravention of the rights set out in ICESCR and the CRC.
- 4.6 Such a provision will deprive children of hearing differing views about issues such as climate change, Australian and international history, the experience of people with different religious beliefs or cultures, and LGBTQIA+ people, in two ways:
- a) by actually removing children from class for that particular subject matter; and
  - b) rather than risk parent's excluding their students from classes, teachers will begin to simplify what they teach.
- 4.7 Proposed section 17B of the *Education Act* required that all teaching must be 'non-ideological'. Non-ideological instruction is defined as teaching that advocates or

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<sup>26</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, CCPR/C/AUS/CO/6, 9 November 2017 [5].

promotes 'dogmatic or polemical ideology'. This, again, restricts the views that children will be exposed to through the formal education system.

- 4.8 The contravention of proposed section 17B - that is, teaching differing views on important matters - could lead, according to proposed sections 21(1) and 24(2) of the *Teacher Accreditation Act 2004* (NSW), to teachers losing their accreditation to teach in New South Wales. This provision is another pressure for teachers to teach narrow interpretations of complex issues, denying children an important worldview.
- 4.9 There is no need for this Bill. Parents already have a say in their child's education: they are recognised as having the primary responsibility for their child's education<sup>27</sup>, have choices about how and where their children are educated,<sup>28</sup> and can already object to some particular content related to religion being taught.<sup>29</sup>
- 4.10 Proposed section 17E of the Education Act requires government schools to provide a summary of the content being taught in courses in relation to 'moral and ethical standards, political and social values, and matters of personal wellbeing and identity including gender and sexuality. This is unworkable for teachers and schools, and unwarranted. The NSW curriculum is available for all to read and can be discussed with teachers and schools.

### **Supporting trans and gender diverse students**

- 4.11 The Bill would lead to harm for trans and gender diverse students by removing the support that they need to be safe at school.
- 4.12 Trans and gender diverse children are already at risk. The Trans Pathways survey (a national study with trans young people aged 14-25, N=859) found that 78.9% of trans young people experienced discrimination at school, university or TAFE, and these young people were almost four times more likely to have ever attempted suicide compared to those who reported an affirming education experience.<sup>30</sup>
- 4.13 According to both international<sup>31</sup> and domestic law<sup>32</sup>, all children in New South Wales - including trans and gender diverse children - not only have a place at school, but must have the opportunity to attend school.
- 4.14 Some children require extra assistance to attend school. For trans and gender diverse children, to fulfil their right to education, they should have access to support such as counsellors.
- 4.15 The bill will allow discrimination - of which the state has a positive obligation to prevent - including bullying and harrasment, to stem from the curriculum and payout in the classroom and playground.

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<sup>27</sup> Education Act 1990 (NSW), s 4(b)

<sup>28</sup> Education Act 1990 (NSW), s 22

<sup>29</sup> Education Act 1990 (NSW), s 26

<sup>30</sup> Strauss P, Cook A, Winter S, Watson V, Wright Toussaint D, Lin A. Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Perth, Australia: Telethon Kids Institute; 2017.

<sup>31</sup> ICESCR Article 13

<sup>32</sup> Education Act 1990 (NSW)

- 4.16 The bill prohibits providing support to trans and gender diverse students. If school counsellors or teachers 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 them at birth, they will risk their jobs.<sup>33</sup>
- 4.17 The Bill will force trans children to reject or deny their experience, or stop attending school, to the great detriment of their wellbeing and to the great detriment of their local communities.

## Teaching about gender

- 4.18 The overview of the Bill sets out that it aims to 'prohibit the teaching of the ideology of gender fluidity to children in schools'. This would be enacted by proposed sections 8(1)(e1), 10(1)(d1), 12(1)(e), 14(4), 17A, 30 of the *Education Act*, proposed section 11(1)(d) of *Education Standards Authority Act 2013* (NSW), and proposed section 20(1A) of the *Teacher Accreditation Act 2004* (NSW).
- 4.19 We note that in its submission to this Committee, Auspath says, "This Bill wilfully mischaracterises the trans experience by using a definition of 'gender fluidity'. This language suggests incorrectly that the genders of trans people are entirely changeable and un-fixed." We are concerned that a Bill of this nature is not using appropriate language and definitions, given the impact it will have on the trans and gender diverse community.
- 4.20 The trans and gender diverse experience is not new. First Nations cultures have always recognised concepts of gender that expand beyond Western understanding binary cisgender experiences.<sup>34</sup>
- 4.21 Trans, gender diverse, gender fluid, lesbian, gay, bisexual and asexual people, including children and young people, exist. So too do people with different cultural expressions of gender and sexual orientation such as First Nations sistagirls and brotherboys. Each and every one of these children and young people have a right to a supportive place in school and to see themselves reflected in the curriculum. Other students also have a right to learn about their LGBTQIA+ peers and understand their experience as part of an education process that allows children to gain understanding about the many diverse people and communities they will meet throughout their lives.
- 4.22 Sexual orientation and gender identity are facts of life. They have a place in school curricula.

## 5. Including people born with intersex variations

- 5.1 Proposed section 3(1) of the *Education Act* defines students with physical sex characteristics that do not align with norms for male or female bodies as 'disordered'. Amnesty International is concerned that the Bill uses inaccurate and stigmatising language and definitions to describe people born with intersex variations, perpetuating the lack of understanding and awareness their lives and realities.

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<sup>33</sup> Education Act, proposed ss 15(6), 17A and 17C, *Education Standards Authority Act 2013* (NSW) proposed s 11(1)(d) and *Teacher Accreditation Act* proposed ss 21(1A) and 24(2).

<sup>34</sup> Transhub, *Language - TransHub*, 2021, <https://www.transhub.org.au/trans-mob>

- 5.2 The Bill uses definitions and language for people born with intersex variations that are inconsistent with those used in international or domestic law.
- 5.3 Amnesty International notes that in its submission to this Committee, IHRA (Intersex Human Rights Australia) says “the Australian research based on a 2015 sociological survey shows that children and youth with intersex variations suffer from a lack of inclusive education, and risks associated with stigma, bullying and medical interventions causing absence. 18% of respondents failed to complete secondary school, compared to 2% of the Australian population.
- 5.4 Children who are born with a variation in sex characteristics need access to quality, inclusive and socially just education and educational experiences from birth to age 18.<sup>35</sup>
- 5.5 Children and young people born with intersex variations should have the same access to inclusive, supportive and respectful education and educational settings.

## 6. Scrutiny of legislation

- 6.1 Not only the enactment of the Bill would be harmful to trans and gender diverse children. Its public debate will also have a negative effect on them. It should also be noted that this Bill was introduced soon after the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*, that is also harmful to the LGBTQIA+ community.
- 6.2 Dr Michelle Telfer, Head of the Royal Children’s Hospital Gender Service in Melbourne and former AusPATH President, said in a personal submission to the Commonwealth inquiry into media diversity:

“[media reporting about trans children] created a narrative that did not reflect reality. In my opinion, it was not news, it was disinformation. Its effect was to create fear and anxiety, to exacerbate the stigma, discrimination and prejudice that exists against trans children and young people in our society”.
- 6.3 Amnesty International Australia acknowledges and respects the importance of public consultation processes for proposed legislation, but asks the NSW government to keep in mind the effects that this has on the lives of people.
- 6.4 An additional layer of scrutiny, in the form of a legislated human rights scrutiny committee, could assist in scrutinising proposed legislation before it is put to the public for consultation. For example, the Parliamentary Joint Committee on Human Rights is established by the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Committee’s main function is to examine all bills and legislative instruments for compatibility with human rights, and to report to both Houses of Parliament on its findings.<sup>36</sup> Human rights considered by the Parliamentary Joint Committee on Human Rights are defined as the seven core human rights treaties to which Australia is a party: ICCPR, ICESCR, CERD, CEDAW, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CRC and CRPD.

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<sup>35</sup> Carpenter and Zavros-Orr 2019; Zavros-Orr 2020; Brömdal et al. 2020

<sup>36</sup> Human Rights (Parliamentary Scrutiny) Act 2011, s 7

- 6.5 The Committee seeks to determine ‘whether any identified limitation of a human right is justifiable’ by considering whether there are less restrictive ways to achieve the policy objective, whether there are effective safeguards and controls over the measure, and the extent of the interference with a right.<sup>37</sup>
- 6.6 Members of Parliament who proposes to introduce a bill into Parliament must prepare a ‘statement of compatibility’,<sup>38</sup> which includes an assessment of whether the bill is compatible with human rights.<sup>39</sup>
- 6.7 If the Committee is not satisfied with the human rights compatibility of a bill, it will write to the sponsor of the bill seeking further detail. The Committee also has the power to request a briefing, call for written submissions, hold public hearings and call for witnesses.<sup>40</sup>
- 6.8 Only the Commonwealth, Victoria and the Australian Capital Territory have human rights scrutiny committees active in their legislatures.
- 6.9 Amnesty International recommends that the New South Wales government begin a process to legislate the creation of a parliamentary committee that scrutinises all bills and legislative instruments, for compatibility with human rights.**

## **7. Conclusion**

- 7.1 If enacted, the *Education Legislation Amendment (Parental Rights) Bill 2020* will harm the LGBTQIA+ community, and in particular, trans and gender diverse children.
- 7.2 The bill poses significant threats to children fulfilling their right to education, including by defining some children as disordered.
- 7.3 The bill violates several international laws - namely ICESCR and CRC - and contravenes the intention of domestic legislation that aims for universal access to education.
- 7.4 Amnesty International strongly recommends that Portfolio Committee No.3 - Education rejects the *Education Legislation Amendments (Parental Rights) Bill 2020*.**

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<sup>37</sup> Parliamentary Joint Committee on Human Rights, ‘Drafting Statements of Compatibility’ (Guidance Note No 1, Parliament of Australia, 2014) pp 2–3.

<sup>38</sup> Human Rights (Parliamentary Scrutiny) Act 2011, s8(1).

<sup>39</sup> Human Rights (Parliamentary Scrutiny) Act 2011, s8(3).

<sup>40</sup> Commonwealth, Parliamentary Debates, House of Representatives, 20 June 2012, 7177 (Harry Jenkins).