

**Submission
No 75**

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

Organisation: Save Women's Sport Australasia

Date Received: 23 February 2021

EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020 EDUCATION FOR INQUIRY AND REPORT

This submission is in response to deep concern caused by the proliferation of gender identity ideology that is being taught in NSW schools, to date, this has occurred without parliamentary oversight, parental knowledge or consent, public awareness or media scrutiny.

Gender identity ideology is already influencing policy and practice in NSW schools via Education Bulletin 55 – Transgender Students in Schools.

CRITICAL ANALYSIS:

NSW Department of Education Bulletin 55 – Transgender Students in Schools

Bulletin 55 *Transgender Students in Schools* (“the document”) is the official policy of the NSW Department of Education in relation to trans-identified (“transgender”) students. It was conveniently published in December 2014 just before the holiday break, and it is in keeping with the International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth & Student Organisation (IGYLO) strategies designed by global law firm Denton’s for the regulatory and institutional capture by gender identity ideology lobbyists. The timing was likely purposeful in order to avoid any media scrutiny or public debate in implementing such policy and legislation. This tactic was favourable to the efforts of these ideologists, as it is likely the proposal would be rejected or criticised by the vast majority of the general public had they been aware of its intentions.

The document contains a number of discriminatory and alarming policies:

- It deliberately conflates ‘sex’ with ‘gender’, and omits to refer to the single-sex exceptions contained in the *Sex Discrimination Act 1984* (Cth) in relation to schools and other areas;
- It continually prioritises one protected characteristic (‘gender identity’) over others, contrary to Commonwealth sex discrimination legislation;
- It fails to satisfy Australia’s international treaty obligations under CEDAW Art.10 in relation to education and sport;
- It ignores and fails to meet basic safeguarding requirements by promoting mixed-sex changing rooms and residential accommodation;
- It treats concerned parents as a safeguarding risk;

- It disregards the rights of all pupils to safety, privacy and dignity in single sex spaces;
- It disregards the rights of teenage girls to compete in sports on a level playing field as per *Sex Discrimination Act 1984* (Cth) s 42, *Anti-Discrimination Act 1977* NSW s38 and CEDAW Art. 10(g).

Reliance on Erroneous and Ideologically Informed Language

The policy begins by upholding the ideological stance that sex is "assigned" at birth. This is factually untrue as sex is observed and recorded at birth. Sex is determined at fertilisation with the absence or presence of the Y chromosome, specifically the SRY gene, with observation in utero possible from the beginning of the second trimester, and via genetic testing from 7 weeks via a blood test of the mother. The word "assigned" has been co-opted by gender ideologists from the now outdated practice of "assigning" a sex to an infant born with ambiguous genitalia due to a Disorder or Variation of Sex Development. The current protocol for such a situation is that scans and a blood test are conducted in order to ascertain the sex of the infant, as Disorders of Sex Development conditions (colloquially known as "intersex") are conditions that arise from either one sex or the other.

In relation to birth certificates, the document erroneously refers to "gender", because it is "sex" (not "gender") that is recorded on the document, and this opens up the broader implications of people being able to retrospectively alter a core identity document to reflect a factually untrue status.

The document repeatedly refers to "gender", "gender identity" or "gender expression", without including a definition within the document. "Gender identity" has been defined in federal legislation and is based on a definition promulgated in the Yogyakarta Principles. The concept of "gender identity" is unable to be defined without resorting to circular reasoning and relies on offensive and restrictive gender stereotypes (i.e. a little boy likes "Frozen" and wants to grow his hair therefore IS a girl, instead of just being a child who may be gender non-conforming, or is simply exploring his personality as a normal part of child development). This is contrary to the Sex Discrimination Act (Schedule) and CEDAW Art.5(a) where sex-based stereotypes are specifically rejected in order to eliminate prejudice against women.

Toilets and Change Rooms

"The need for the student to be safe is a paramount concern in these circumstances. Students should not be required to use the toilets and change rooms used by persons of the sex they were assigned at birth if they identify as a different gender."

This statement privileges the needs of the trans-identified student over the rest of the student body. This is particularly problematic in the situation of a male student identifying as female and then using the girl's facilities. Girls are entitled to privacy, dignity and safety, particularly during puberty with the additional burden of managing menstruation (or pregnancy), without having to deal with a male-bodied person in this space.

There is ample evidence of girls being adversely affected at school via rebranding of female toilets as "gender neutral" or allowing biological males access to this space. There are reports of girls electing to self-exclude, being subjected to period-shaming, and refraining from eating and drinking (with a commensurate rise in UTIs).

In QLD there was a huge public outcry when a new school in Brisbane was promoted as having "gender neutral" toilets, which forced Premier Palaszczuk to step in and revert the policy to single sex provision.

Sanctions for Objecting to Overriding of Boundaries

"If other students indicate discomfort with sharing single-sex facilities (toilets, change rooms, dormitories or overnight accommodation for example) with a student who identifies as transgender, this should be addressed through the school learning and support team."

Our society takes great pains and invests significant time, energy and resources to educate our children about safeguarding from a very young age (particularly for girls), and we encourage them to speak up if they feel uncomfortable, intimidated or frightened, particularly by the presence of a male in a space where they are vulnerable. Yet the document completely dismisses this basic safeguarding tenet by telling children that if they raise concerns or assert their boundaries, the child who is rightfully expressing their fear or discomfort with an opposite sex child being in a confined and private space with them, it will be the complainant student who will be removed, reprimanded and re-educated to acquiesce to gender ideology because the trans-identifying student's needs have been given priority. It also promulgates a false narrative that the male student is actually "female" and has every right to be in that space. We are asking to children to ignore the reality of their own senses and to accommodate a falsehood despite their own distress or discomfort.

It is particularly egregious and concerning to presume that a male student should be allowed to share sleeping quarters with female students - this is a significant safeguarding issue, and

completely disregards the rights of girls to safety, privacy and dignity in spaces where they may be in a state of undress or asleep.

School Sport

"Most students will be able to continue to participate in competitive sport in their identified gender after they have turned 12".

This section of the document completely misrepresents the protection for sex-segregated sport under *Sex Discrimination Act* (Cth) s42 where sports can be segregated by sex after the age of 12 years if "strength, physique and stamina" are relevant. These factors are relevant to all sports, particularly as most children have begun puberty by age 12, which is when the biological advantage of males over females is arguably apparent. Under the Commonwealth legislation, a person over the age of 12 years old can be excluded from participation in any sporting activity on the basis of their sex if "stamina, strength or physique" are relevant. It could be determined that stamina, strength or physique are relevant for every sport, and that every sport is "competitive". Bulletin 55 fails to sufficiently explain that the purpose of this statute is to acknowledge the biological differences between men and women, and that it is lawful for males to be excluded from female sports.

Furthermore, *Anti-Discrimination Act 1977* (NSW) s 38P specifically protects women's sports and enables a transgender person to be lawfully excluded in any sporting activity for members of the sex with which the transgender person identifies. This means that a biological male who is a transgender person and identifies with the female sex can be lawfully excluded from female sports. Bulletin 55 fails to mention this exclusion in NSW legislation whatsoever. Bulletin 55 appears to be relying on the *Sex Discrimination Act 1984* (1984) s 42 where

The implication is that there is a presumption that the needs of the trans-identified student will again take precedence, without any due consideration for safety and fairness of the girls, and the trans-identified student's needs take priority without any application of the legislative exemptions that allow for a player to be excluded solely on the basis of sex in NSW, and upon consideration of the factors of "strength, physique and stamina" under Commonwealth legislation. The prioritisation of persons with a trans-identity is a feature of much policy that concerns gender identity, along with failure to consider the needs and rights of girls and women, interpretation of the legislation as promulgated by Bulletin 55 is simply another example of this.

SAVE WOMEN'S SPORT

"It may be lawful to exclude students aged 12 and over from competing in certain sports at the elite level in certain circumstances".

The legislation does not differentiate between elite or community or social sports, in fact the legislation is entirely silent on distinguishing the differing levels of sport. The safety, privacy, dignity and fairness for girls in sports, fought for by women over many decades of activism to ensure equal participation in sport have been completely disregarded. Investment, resource allocation and media coverage of women's sports remains woefully inequitable and has only been further adversely impacted by COVID-19.

A high-profile case is currently being brought by three young girls in the US in relation to Title IX violations where the state of Connecticut has allowed males to compete against females (*Selina Soule v Connecticut Association of Schools*). One of President Biden's first acts was to sign an executive order that destroyed the purpose Title IX as protection for women and girls with the inclusion of "gender identity" as a protected characteristic under the legislation. This effectively means that any male can compete in any female sport as long as he declares a trans and/or gender identity where he claims to "identify as a woman". There have been a number of states that have successfully brought in legislation to specifically protect women's sports, such as Idaho and Montana, and other states such as Alabama and Mississippi are considering the same.

Enrolment in a single sex school

"If the student is seeking enrolment at a single-sex school, a decision about their eligibility to enrol should be made on the basis of his or her identified gender. If the student is already attending school advice should be sought from Legal Services."

The guidelines wilfully misrepresent the legislative rights of educational institutions by remaining silent on their rights under the relevant statutes and promoting the erroneous idea that a student must be accepted on the basis of "gender", as distinct from sex.

The guidelines assert a position contrary to an exclusion in the Commonwealth legislation *Sex Discrimination Act 1984* (Cth) s 21(3) as the statute expressly states that a student may be excluded from an educational institution on the basis of their sex.

SAVE WOMEN'S SPORT

The state legislation is silent on the point of exclusion on the basis of sex, but it expresses that a private educational authority is not discriminating against a student if they are excluded from the educational institution on transgender grounds (*Anti-Discrimination Act 1997 (NSW)* s 38K(3)).

Both statutes allow for an educational institution, single sex under commonwealth compared to private under state, to exclude a student on the basis of either sex if they are of the sex other than that for which the educational institution is conducted (commonwealth), or on transgender grounds (state). Essentially and significantly, schools are under no obligation to accept the student on the basis of gender despite what is asserted in the Guidelines.

It is highly unlikely that the vast majority of parents electing to send their children to a single sex school would be accepting of a policy that enabled students of the opposite sex to attend.

Teaching Gender Identity in the Curriculum

"Gender identity may be discussed in many curriculum areas"

This is deeply concerning due to the highly contentious nature of the topic, and it is arguing that NSW school children should be taught factually untrue and ideological concepts such as human beings can "change sex", or "boys can be girls, or have periods" and some "girls have penises".

A recent example of this is the "genderbread person" - a transgender propaganda tool that managed to find its way into NSW classrooms, despite gender identity being explicitly excluded from the formal curriculum.

There is a case currently pending in Canada where a 6 year old girl was deeply distressed at being told girls aren't real.

"Teachers should treat the topic in a manner that is respectful, inclusive and positive".

Based on the current methods of silencing or shaming critics of the ideology, it is unlikely that the opinion of any student criticising the dogma would be welcomed. It is more likely the student would be reprimanded for failure to unquestioningly accept the ideology should they dare to critique it. Furthermore, "inclusion" in this instance excludes girls, as by accepting this

ideology they are being compelled to subsume their needs to those of biological male students.

Undermining of Family Integrity and Parental Authority

The most alarming part of the document is found in *Support for the extended family of the student* and *Reporting Requirements*. If the parents of the trans-identified child do not "affirm" the child and refuse to provide "consent" to the school to facilitate the transition ("*to help with decision making, planning, assessment or service provision*"), the school is informed that they can rely on the *Children and Young Persons (Care and Protection) Act 1998* to circumvent the parents' rights and authority, and they are encouraged to report the parents to Community Services for this "harm".

There is a growing group of concerned parents who have suffered already due to this policy - ordinary, caring, diligent parents whose children have come to believe "transitioning" is a solution to their problems. Many children "diagnosed" with "gender dysphoria" have pre-existing mental health issues; are on the autism spectrum; or are simply gender non-conforming and would likely grow up to be gay or Lesbian if they are left alone.

In QLD, the state removed a young girl from the care of her parents because they wished for her to undertake a therapeutic pathway rather than the irreversible and risky medical treatment of injecting testosterone. This raises the issue of the medicalisation of minor children which has become a global scandal with the *Keira Bell-v-Tavistock* decision of the UK High Court in December 2020. A panel of three High Court judges decided that children under the age of 16 do not have the capacity to consent to gender affirming medical intervention (puberty blockers and cross-sex hormones), and it is highly unlikely that children between the ages of 16 and 18 have capacity, therefore consent of the court must be sought, but highly unlikely to be granted. As a result, the Tavistock-Portsmouth GIDS clinic that provided "gender affirming" medical interventions for children has ceased doing so. It must be noted that the Australian mainstream press, including SBS and ABC, have failed to report on this decision despite the fact it made headlines around the world. At this stage, no Australian federal or state legislation or policy has taken into consideration this landmark decision.

Managing Risk of Harm

"Schools have a legal duty to protect students from foreseeable risk of harm and to do what is reasonably practicable to ensure their safety".

It is clear from the document that the concerns and rights of girls and any non-trans identifying students have been completely disregarded and dismissed, if they were even considered at all. The only student whose safety and risk of harm has been acknowledged is the student who identifies as trans. Most egregiously, the document asserts that other students must prioritise this as well, even if it is to their own detriment.

"The welfare and educational needs of the student are of primary importance and should be the focus of all actions taken by the school".

It is remarkable that the needs of the trans-identified student take priority over the needs of the rest of the entire student body, particularly in relation to the needs of female students failing to be given any consideration whatsoever.

A school's exposure to liability may be increased if biologically male students are entitled to access spaces that have been set aside for female-only use when the girls may be vulnerable, asleep or in a state of undress. Additionally, it appears no consideration has been given to the known and foreseeable increased risk of injury and concussion to girls playing sports should they have to compete against a biological male.

These questions demand answers:

- Who were the advisers to the Department of Education in relation to this Bulletin?
- Why has there been an obvious failure to consider the needs of the overall student body against those of a single or very small group of students?
- Why were the needs of female students ignored?
- Why has this policy and regulatory capture occurred with no media scrutiny or public debate, except for coverage that is unilaterally in favour of gender ideology?
- Why were students, particularly female students, and parents, not consulted?

Recently in the UK, school districts and the CPS implementing similar guidelines were threatened with judicial review and legal action and the guidelines have now been withdrawn. It will only be a matter of time before similar legal action occurs here in NSW, should these issues not be addressed.

Bulletin 55 is an egregious example of policy capture by transgender ideologists. It is deeply concerning that such guidelines are being implemented in our schools with little oversight or public scrutiny when it has such a significant material impact on the student body, particularly girls.

SAVE WOMEN'S SPORT

The entrenchment of gender identity ideology into our curriculum will further enable policies and guidelines such as Bulletin 55, which come at significant detriment to female students and male students who are not trans-identifying.

This has gone far enough, our children, especially our daughters, deserve better.

Save Women's Sport Australasia

22 February 2021