

**Submission  
No 78**

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

**Organisation:** Catholic Schools NSW

**Date Received:** 15 March 2021

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15 March 2021

The Hon. Mark Latham, MLC  
Chair  
NSW Parliament, Portfolio Committee 3 - Education  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Latham,

**Re: CSNSW submission on the *Education Legislation Amendment (Parental Rights) Bill 2020***

Please find attached the submission from Catholic Schools NSW (CSNSW) to the parliamentary inquiry into the *Education Legislation Amendment (Parental Rights) Bill 2020* (the Bill).

CSNSW makes this submission in its capacity as the system authority and representative body of Catholic schools and systems in NSW.

The submission expresses support for the Bill, though requests further clarity to alleviate possible concerns in the Catholic education community.

I note that Catholic Education Diocese of Parramatta has prepared a separate submission, which it has provided to the inquiry.

If you would like to discuss our submission, then please contact me at any time.

Kind regards,

Dallas McInerney  
Chief Executive Officer

# Catholic Schools NSW

Submission to Portfolio  
Committee No. 3 – Education:

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

## Executive Summary

- Catholic Schools NSW (CSNSW) supports legislative recognition of the role of parents as the primary and principal educators of their children.
- CSNSW notes such recognition already exists in Australian and International Law and commends the objective of the *Education Legislation Amendment (Parental Rights) Bill 2020* (the Bill) to make the recognition explicit with respect to the *Education Act 1990* (the Act).
- As a general principle, governments and legislatures should exercise caution in considering the prohibition of particular content and subject matter in school settings, lest the benefits of open scholarship and free inquiry be unduly constrained.
- CSNSW notes such a prohibition currently exists in the Act with respect to the teaching of religion in public schools. Since 1880, government schools have been legislatively constrained to only teach religion in a general and neutral way and are prohibited from teaching polemical or dogmatic theology. Consistent with that precedent, this Bill seeks to prohibit the teaching of gender fluidity ideology.
- CSNSW supports the prohibition of the teaching of gender fluidity ideology in NSW schools.
- The Bill needs to make a clear and unarguable distinction between curriculum or lesson content which teaches the ideology of gender fluidity and the critical need to support students who experience or exhibit gender dysphoria.
- Catholic schools are called to extend spiritual, pastoral, and other support to all students particularly those in need or distress. This Bill can in no way constrain responding to the needs of students or the related activities of education professionals.

## Introduction

Catholic Schools NSW (CSNSW) is the representative body for Catholic schools and systems in NSW, providing expert policy advice, fostering collaboration and advocating on their behalf. CSNSW is also the approved system authority for funding purposes and ensures compliance with respect to both the Commonwealth and NSW Education Acts.

There are 597 Catholic schools in NSW, which employ 30,000 staff and enrol 257,000 students across Kindergarten to Year 12.

This submission is in response to Portfolio Committee No. 3 – Education: Inquiry into the *Education Legislation Amendment (Parental Rights) Bill 2020*. The Bill seeks to amend the *Education Act 1990*, the *Education Standards Authority Act 2013*, and the *Teacher Accreditation Act 2004*.

The Bill has two overarching aims:

- it further acknowledges and promotes the primacy of parents in the education of their children as it relates to schools, and
- it prohibits the specific teaching of gender fluidity as an ideology in government and non-government schools.

CSNSW supports these aims and the provisions of the Bill, subject to the consideration of the recommendations contained in this document.

CSNSW's support is informed by a belief that parents are the primary and principal educators of their children. The Bill can reasonably be interpreted as giving expression to widely held community attitudes on the role of parents.

Noting that the community may misunderstand what the Bill does and does not prohibit, CSNSW recommends further consideration to ensure this Bill only prohibits the teaching of ideological definitions of 'gender fluidity' and does not affect the provision of pastoral care or support to children experiencing gender dysphoria.

## Part 1. 'Matters of parental primacy'

### The duties and rights of parents

Catholic education has been an important provider of NSW schools for 200 years. As an established education provider, it is legitimate that its animating principles be considered in the regulatory framework. Not for the purposes of proselytising but seeking common ground with prevailing community attitudes.

The Catholic Church has long adhered to the principle that parents are the primary educators of their children. This principle of parental primacy is articulated in Church documents:

*...Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators.<sup>1</sup>*

The *Catechism of the Catholic Church* also provides helpful instruction and guidance in this matter:

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<sup>1</sup> Declaration on Christian Education *Gravissimum Educationis* (GE), promulgated on October 28, 1965

*'The role of parents in education is of such importance that it is almost impossible to provide an adequate substitute.' The right and the duty of parents to educate their children are primordial and inalienable.<sup>2</sup>*

The Congregation for Catholic Education has provided a helpful discussion of the principle that the family is to be recognised as the primary pedagogical environment for the educational formation of children. It states:

*This 'primary right' finds its most concrete expression in the 'most grave duty' of parents to take responsibility for the 'well-rounded personal and social education of their children', including their sexual and affective education, 'within the broader framework of an education for love, for mutual self-giving'. This is at once an educational right and responsibility that is 'essential, since it is connected with the transmission of human life; it is original and primary with regard to the educational role of others, on account of the uniqueness of the loving relationship between parents and children; and it is irreplaceable and inalienable, and therefore incapable of being entirely delegated to others or usurped by others'.<sup>3</sup>*

### The role of schools

The Catholic Church also recognises the proper relationship between schools and parents in the education of the child. It must be complimentary and in accordance with the principle of subsidiarity, with the parents always remaining the primary educators. It is a relationship of open collaboration, partnership or alliance with parents in the education of the child, including the spiritual, religious, social, physical, sexual, psychological development of young people.

A helpful explanation of how Catholic schools educate in a community context is explored in The Congregation for Catholic Education's document *Male and Female He Created Them: Towards a Path of Dialogue on the Question of Gender Theory in Education*, which states:

*[The school community] dialogues with the family, which is the primary community to which the students that attend school belong. The school must respect the family's culture. It must listen carefully to the needs that it finds and the expectations that are directed towards it'.<sup>4</sup>*

It is these principles that inform CSNSW's belief that parents have the right to choose the school their children attend and the moral and religious values their children are taught.

### Alignment with International Law

The right of parents to determine the religious and moral education of their children also has an established foundation in International Law.

The *Universal Declaration of Human Rights* (UDHR) states at Article 26(3) that '*parents have a prior right to choose the kind of education that shall be given to their children.*'<sup>5</sup> In 1966, the parties to the International Covenant on Civil and Political Rights (ICCPR) further agreed to '*undertake to have respect for the liberty of parents and, when applicable, legal guardians, to*

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<sup>2</sup> Catechism of the Catholic Church, 1993, paragraph 2221.

<sup>3</sup> *Male and Female He Created Them: Towards a Path of Dialogue on the Question of Gender Theory in Education*, paragraph 37.

<sup>4</sup> *Male and Female He Created Them: Towards a Path of Dialogue on the Question of Gender Theory in Education*, para 40.

<sup>5</sup> *Universal Declaration of Human Rights*, 10 December 1948 (*General Assembly resolution 217 A*), article 26 (3).

*ensure the religious and moral education of their children in conformity with their own convictions.*<sup>6</sup>

The International Covenant on Economic, Social and Cultural Rights also upholds this freedom, with signatories agreeing to *‘undertake to have respect for the liberty of parents and ... legal guardians to choose for their children schools, other than those established by the public authorities, which conform to ... minimum educational standards ... and to ensure the religious and moral education of their children in conformity with their own convictions.’*<sup>7</sup>

The right of parents to choose an education for their children that conforms with their own religious and moral convictions is ultimately founded on the right to religious freedom. This right is articulated in the UDHR, the ICCPR and the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.<sup>8</sup>

Australia is a signatory to each of these covenants.

### Provisions relating to ‘matters of parental primacy’

CSNSW (and its predecessor organisation, NSWCEC) has consistently supported embedding the principle that the education of a child is primarily the responsibility of the child’s parents in the Act. The provisions of the Bill relating to matters of parental primacy are consistent with International Law and existing school regulation. The amendments set out in the Bill strengthen and elaborate on existing principles contained within the Objects of the Act. The Bill would ensure this principle is articulated more comprehensively with respect to matters of parental primacy and ensure the principle is put into practice.

### Part 2. ‘Gender fluidity’

As a general principle, governments should not seek to ban the discussion of particular topics, particularly in educational settings. This approach can prevent free lines of inquiry amongst students in the classroom, which is an appropriate place for open discussion and the exploration of ideas. In this context, the position and professional judgement of the teacher must be properly recognised.

Notably, an existing precedent for a legislative prohibition or constraint of what can and cannot be taught in schools can be found in section 30 of the Act. Since 1880, government schools have been restricted from teaching religion in a way which is polemical or dogmatic but have been duly permitted to teach religion in a general and neutral way. CSNSW notes the Bill seeks a similar constraint on gender fluidity ideology and would apply to both government and non-government schools.

Such a constraint gives legislative support to the aforementioned principle of parents as primary educators.

### Support for Students

The Catholic Church consistently affirms the inherent dignity of every human person, and advocates for the wellbeing of all people, particularly the vulnerable. The Catholic Church

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<sup>6</sup> *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI), 16 December 1966, article 18 (4).

<sup>7</sup> The International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI), 16 December 1966, article 13 (3).

<sup>8</sup> *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 1981, article 5.

teaches that *'the human body shares in the dignity of the image of God.'*<sup>9</sup> The Church affirms the inherent differences between males and females and that all people should acknowledge and accept their sexual identity.<sup>10</sup>

The Church recognises that *'beyond the understandable difficulties which individuals may experience, the young need to be helped to accept their own body as it was created.'*<sup>11</sup> This vision is challenged by the new ideologies of gender<sup>12</sup> in school settings. CSNSW acknowledges that in rare cases<sup>13</sup>, children and young people can perceive incongruence between their biological sex and their broader identity. This psychological dissonance is properly recognised as being a separate and removed issue to the advancement of ideology via curriculum or classroom resources.

Critically, schools need to retain the ability to provide support and pastoral care to children and young people experiencing gender dysphoria.

### Provisions relating to the teaching of 'gender fluidity' ideology

The sections of the Bill relating to the prohibition on 'gender fluidity ideology' are supported by CSNSW. Namely, Schedules 1[1], [6-8], [14], and relevant parts of Schedules 1[1], [9], [10], [13], and 2[1-3].

CSNSW's support of the Bill's provisions that seek to prohibit the teaching of gender fluidity ideology is contingent on the understanding that it would not capture instances of general discussion (of a non-ideological nature) for example, that arise in a classroom nor would it prohibit the provision of pastoral care, support, or counselling for students in need.

Accordingly, CSNSW believes that a clear distinction should be made between teaching 'gender fluidity' ideology and the pastoral responsibilities inherent in supporting students experiencing gender dysphoria. It is necessary to consider the interpretation and application of the proposed section 17C which makes specific reference to *'teaching, instruction, counselling and advice'* in relation to gender fluidity.

It has been argued by some<sup>14</sup> that the prohibition of 'gender fluidity' ideology in schools would undermine the professional service delivery of care by social workers in schools and put vulnerable students at risk. CSNSW does not consider that this Bill contributes to this perceived risk, however, recommends that an explanatory memorandum be inserted into the Bill to make a clear and unarguable distinction between curriculum or lesson content which teaches the ideology of gender fluidity and the critical need to support students who experience or exhibit gender dysphoria.

CSNSW also recognises that all schools have a role to play in providing age-appropriate instruction on gender and sexuality, while recognising the principle of parental primacy.

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<sup>9</sup> Catechism of the Catholic Church, 1993, paragraph 364.

<sup>10</sup> CCC, paragraph 2393.

<sup>11</sup> Paragraph 285.

<sup>12</sup> Post-synodal apostolic exhortation, *Amoris Laetitia*, Pope Francis, paragraph 285.

<sup>13</sup> According to the American Psychiatric Association, Gender Dysphoria affects an estimated 0.005 to 0.014 percent of adults who were born as males. The estimates are between 0.002 to 0.003 percent for adults who were born as females. American Psychiatric Association. (2013). Gender Dysphoria. In *Diagnostic and statistical manual of mental disorders* (5th ed.).

<https://doi.org/10.1176/appi.books.9780890425596.dsm05>

<sup>14</sup> Media Release, Australian Association of Social Workers, *AASW Education Legislation Amendment Would Put Students At Risk*, 10 February 2021.



Discussions on gender and sexuality should align with the NESA curriculum and meet parental expectations.

CSNSW notes that the current drafting of the Bill, has the potential to cause some confusion, noting that sections 17B, 17D and 17E relate to government schools only, and sections 17A, and 17C relate to both government and non-government schools.

CSNSW acknowledges that a careful reading of the Bill avoids confusion, but nevertheless draws the Committee's attention to this aspect of the drafting and suggests further review to provide clarity.

**Recommendation 1:**

That the provisions of the Bill that relate to matters of parental primacy be supported by Parliament.

**Recommendation 2:**

That the provisions of the Bill that prohibit the teaching of gender fluidity ideology be supported by Parliament and an explanatory memorandum be inserted into the Bill to make a clear and unarguable distinction between curriculum or lesson content which teaches the ideology of gender fluidity and the critical need to support students who experience or exhibit gender dysphoria.