

ACON SUBMISSION TO

Portfolio Committee No. 3 – Education

Education Legislation Amendment (Parental Rights) Bill 2020

February 2021





About ACON

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives.

We are a fiercely proud community organisation, unique in our connection to our community and in our role as an authentic and respected voice.

Members of Australia's sexuality and gender diverse communities experience disparities when compared to health and wellbeing outcomes experienced by the total population. They may also face significant barriers to accessing traditional healthcare pathways.

We recognise that members of our communities share their sexual and gender identity with other identities and experiences and work to ensure that these are reflected in our work. These include people who are Aboriginal and Torres Strait Islander, people from culturally and linguistically diverse backgrounds, people who use drugs, mature aged people, young adults, and people with disability.

ACON is known locally, nationally, and internationally as an expert in addressing the health and wellbeing needs of trans people, some of the most marginalised and vulnerable people in NSW.

Our ground-breaking *Blueprint for Improving the Health and Wellbeing of the Trans and Gender Diverse Community in NSW (2019)*, and the range of initiatives we have implemented from it has continued to position ACON as the leading experts on trans health. This has included the release of *TransHub*, a world-leading and award-winning platform for all trans people, their allies and health professionals. We are considered a leading voice in policy, advocacy and health promotion related to the health and inclusion of trans people across NSW.

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ACON acknowledges the Traditional Owners and Custodians of the lands on which we work. We pay our respects to Elders past, present and emerging.

Executive Summary

ACON strongly opposes the *Education Legislation Amendment (Parental Rights) Bill 2020*.

This Bill threatens the right of every child to a safe school environment and to receive a broad and fulfilling education. The Bill, if given effect, would amount to erasure of, and misinformation about, people in our communities, with significant negative impacts for them, their families and loved ones. It will deteriorate health outcomes, particularly mental health outcomes, as well as increase non-participation rates in school and inhibit students' right to a comprehensive education.

Our main concerns with this Bill are:

1. **The Bill fosters an unsafe learning and working environment for sexuality and gender diverse students and teachers.** LGBTQ young people, particularly those who are trans and gender diverse, experience higher rates of suicidality and self-harm, which is strongly associated with harassment and bullying in schools. This Bill will prevent teachers from acknowledging the existence of trans and gender diverse students and prevent them from creating a safe space for students to flourish and learn.
2. **The Bill contradicts non-discrimination obligations under the *Anti-Discrimination Act 1977 (NSW)* and the *Sex Discrimination Act 1984 (Cth)*.** Under these laws, schools and teachers have a legal obligation to educate students in NSW public schools without discrimination based on their 'transgender status', 'gender identity' or 'intersex status'.
3. **The Bill denies the right of children to form their own views and opinions on moral, ethical, political and social issues, and on matters of personal wellbeing and identity.** Allowing parents to unilaterally remove a child from a classroom denies children the right to a well-rounded education. A parent's opinion or view on an issue does not abrogate a child's right to learn about the issue.
4. **Existing legislation and frameworks mean parents are already given adequate choice on how and where their child is educated,** and as such there is no need for this sweeping Bill.

This Bill is harmful and unnecessary, and ACON opposes it in the strongest terms. The terms of this Bill are untenable not only because of the ramifications the Bill has on members of our communities, but also for the way in which it represents a step backwards in public health strategies, contradicts existing legislation, endorses censorship, violates human rights, and seeks parental protections that are already enshrined in legislation.

ACON also notes with grave concerns the divisive and unnecessary debate this Bill will generate, and its impacts on vulnerable communities.

Recommendation

ACON recommends this Bill is rejected by the Portfolio Committee No. 3 – Education and the NSW Government in its entirety.

Introduction



ACON welcomes the opportunity to provide this submission about the *Education Legislation Amendment (Parental Rights) Bill 2020*.

Our submission is grounded in ACON's community health expertise and focus on providing opportunities for people with diverse genders and sexuality to live their healthiest lives.

ACON's information platform, *TransHub*, uses the terms trans, transgender and trans and gender diverse as umbrella terms for a population of people whose gender is different to what was presumed for them at birth.¹

Trans and gender diverse people experience marginalisation, discrimination, stigma, and harassment at disproportionate and harmful levels, resulting in poorer health and wellbeing outcomes, particularly with regard to mental health. ACON is committed to improving these outcomes. It is crucial that policy frameworks actively enable work to improve these outcomes to ensure an equitable society where all Australians are able to live their healthiest and fullest lives.

Extensive public health research provides evidence-based recommendations to improve health and wellbeing outcomes for trans and gender diverse people. These recommendations often centre around the continued visibility, support, and affirmation of trans and gender diverse people.

By prohibiting teaching of 'gender fluidity' in all school curricular, this Bill actively contradicts those recommendations, effectively entrenching disproportionately negative health outcomes for trans and gender diverse people. The Bill shows a blatant disregard for the lives of trans and gender diverse people, and their families.

The Bill also sets a worrying precedent of government intervention in school curricular. By prohibiting specific teachings, the Bill encourages censorship, and threatens to effectively end the careers of staff members who contravene this. This in itself is an ideological move, despite the Bill requiring teaching to be non-ideological.

The Bill is discriminatory in nature, contradicting non-discrimination obligations on a state and federal level. The amendments to the *Teacher Accreditation Act 2004 (NSW)* represent the sanctioning of unlawful and discriminatory practices. The Bill undermines the agency of children, and their rights as enshrined in the Convention on the Rights of the Child. Furthermore, the Bill creates unnecessary and unworkable obligations for teachers and staff, to ensure 'parental primacy' where it already exists.

This Bill contradicts evidence-based approaches to health and education, as well as existing policies and state and federal laws, violates the rights of members of the school community, and exists to enshrine the rights of parents when these rights are already protected by existing legislation. The Bill is harmful and unnecessary, and we oppose it in the strongest terms.

ACON's specific concerns with the Bill are addressed in detail below.

The Bill Seeks to Deny the Existence of Trans and Gender Diverse People



“For whatever aspects of existing in this cultural moment are isolating or painful, I have found joy and connection, largely through the trans and queer people in my life, the knowledge that I am demonstrably not alone. We’re here, we’ve always been here, and we’re not going anywhere.” – [Alex Gallagher, Sydney-based writer](#)

This Bill erases the existence of trans and gender diverse people in school environments, preventing trans and gender diverse students from accessing support, and feeling safe at school. Any staff member who acknowledges the existence of trans and gender diverse people would risk losing their job, and teachers risk losing their accreditation to teach altogether.

It is well established that “variations in gender identity and expression are part of the natural spectrum of human diversity that has existed across time and cultures”.² Trans and gender diverse people have existed (though perhaps not by the name ‘transgender’) throughout history, across a range of cultures, including in First Nations clans across Australia.³

This Bill defines ‘gender fluidity’ as “*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.*”⁴ This definition labels people born with intersex variations as “disordered”. Variations of sex characteristics (sometimes known as intersex) are a normal part of human development and should not be described as disordered.⁵

The Bill’s definition of gender fluidity also inappropriately attempts to describe the trans experience. By using the term ‘gender fluidity’ to describe the experience of trans and gender diverse people, this Bill attempts to undermine the lived reality that in fact, most trans and gender diverse people have stable identities and a firm sense of self. Research suggests that many children develop a strong sense of gender identity at a young age.⁶ For most children, that gender identity matches the gender they were presumed at birth, but for others, and current evidence suggests that could be anywhere from 0.6%⁷ to 1.2%⁸ of the population, their gender identity is different to that presumed for them at birth.

Prohibiting teaching of ‘gender fluidity’ effectively erases trans lives from school environments. Any member of the staff community who acknowledges the existence of trans and gender diverse people risks losing their accreditation, as a result of the Bill’s amendments to the *Teacher Accreditation Act 2004 (NSW)*, and therefore their career. A student whose parents may support and affirm their gender at home will be forced to deny their identity at school. Any member of the staff community who so much as uses their name, validating their existence in this way, risks losing their job. Many studies have indicated that key to a young person’s wellbeing is their ability to feel supported and affirmed in their immediate environments, and this Bill prevents that for trans students.⁹

By erasing trans lives and placing staff's careers in jeopardy, this Bill fosters an unsafe learning and working environment. Trans and gender diverse students already face unsupportive learning environments. A 2017 study of trans and gender diverse people aged 14-25 found that 78.9% of respondents reported that issues at school were a key driver of their poor mental health.¹⁰ *Writing Themselves in 4* reports that in the last 12 months, 67.9% of trans and gender diverse respondents reported feeling unsafe or uncomfortable at their educational institution.¹¹

The NSW Department of Education and Communities recognises the need for all students to feel safe in their learning environment and has enshrined this value via The Wellbeing Framework for Schools. The foundation of this framework is that students who feel connected are able to succeed and thrive in their schooling. Through the Wellbeing Framework, the Department mandates that “children and young people in public education in NSW will experience a sense of connection, inclusion, respect for individuality and difference, resilience, empowerment, capacity to contribute to their school and wider community, and confidence to positively shape their own futures.”¹²

By erasing trans and gender diverse people from anywhere in the school environment, this Bill prevents schools from achieving the principles of the Wellbeing Framework for all students. Denying the existence of trans and gender diverse people has significant impacts on their lives, and the people who love, support, and affirm them.

The Bill Promotes Poor Mental Health Outcomes for Trans and Gender Diverse Students

“How do we find ourselves in a situation where world-respected medical and health professionals are championing the importance of supporting transgender children, while opponents of trans rights continue to peddle lies, distortions and half-truths to demonise trans kids and their families?” – [Jo Hirst, Melbourne-based writer](#)

As a health organisation, ACON's primary objection to this Bill is the way in which it compromises the health, wellbeing, and safety of trans and gender diverse students and members of the school community. The Bill does this by creating an unsafe learning environment, compromising trans and gender diverse students' right to an education, and promoting stigma, discrimination, harassment and bullying of trans and gender diverse students. Furthermore, the Bill stands in stark contrast to the recommendations of health and education professionals to improve health, wellbeing and educational outcomes for trans and gender diverse students.

The mental health outcomes for trans and gender diverse people are extremely poor. *Writing Themselves in 4*, the largest ever survey of LGBTQA+ young people (aged 14-21) in Australia, reveals that almost two-fifths (37.9%) of trans and gender diverse respondents have attempted suicide in their lifetime, and almost nine-tenths (88.8%) have ever experienced suicidal ideation.¹³ This reflects similar

findings in earlier studies, and represents rates of psychological distress much higher than the general youth population.¹⁴

Evidence shows that discrimination explains much of the poor mental health outcomes experienced by trans or gender diverse people.¹⁵ Trans and gender diverse people experience the kinds of discrimination, transphobia and abuse that drive poor mental health outcomes in a variety of settings, of which a primary example is their workplace or educational institution.¹⁶

Improving the mental health of trans and gender diverse people is a priority for ACON, and a priority for the NSW Mental Health Commission's Living Well Strategy.¹⁷ Suicide prevention has been identified as a priority for the NSW government, and the Premier in particular.¹⁸ In addition, in October 2020, the NSW Legislative Assembly unanimously moved a motion "to make support and reform for trans and gender diverse communities a priority and to work together towards equality, dignity and respect."¹⁹ ACON applauds the work of the NSW Premier, NSW Mental Health Commission and the NSW Legislative Assembly in committing to improving these outcomes. This Bill would represent a step backward from these commitments.

Experts in the health and wellbeing of trans and gender diverse people have highlighted several key recommendations to improve health outcomes for this population. These include:

- Creating supportive, inclusive, affirming environments for trans and gender diverse young people²⁰
- Implementing trans and gender diverse-specific and equitable anti-discrimination and anti-bullying policies and awareness across educational settings²¹⁻²²
- Revising existing anti-bullying resources to specifically address bullying faced by sexuality and gender diverse students²³
- Using respectful and affirming language, including a person's pronouns and name²⁴
- Staff and leadership training in appropriate, supportive behaviour and language towards trans and gender diverse students²⁵
- Ensuring there is positive representation of trans and gender diverse people in school curricular, so that students feel included, connected, seen, and heard²⁶

By erasing the existence of trans and gender diverse people, and stripping the accreditation of staff who acknowledge the existence of this community, this Bill actively contradicts all of these recommendations.

The Bill Contradicts Non-Discrimination Obligations and Promotes Stigma, Harassment, and Bullying

The Bill contradicts the non-discrimination obligations of NSW schools, and further promotes stigma, bullying, and harassment.

The *Commonwealth Sex Discrimination Act 1984* prohibits the discrimination of any person on the basis of their gender identity.²⁷ The *NSW Anti-Discrimination Act 1977* further prohibits the discrimination of any person on the grounds that they are transgender.²⁸ The NSW Department of Education's Legal Bulletin 55 has outlined that "a student who has identified as transgender enjoys the same legal rights or protections afforded to all students under the duty of care, education and work health and safety laws."²⁹

This Bill amounts to discriminatory treatment of trans and gender diverse members of a school community by prohibiting their ability to live safely and enjoy the same legal rights as other members of the community. The Bill, via its amendments to the *Teacher Accreditation Act 2004 (NSW)*, states that the NSW Education Standards Authority must revoke the accreditation of any person teaching gender fluidity. This means that any trans or gender diverse member of staff who affirms their identity could effectively lose their job as a result.

In prohibiting the teaching of 'gender fluidity', this Bill further stigmatises trans and gender diverse people, allowing for increased opportunity for harassment and bullying. Experiences of bullying and harassment for trans and gender diverse people include bullying based on the way they present themselves, being misgendered, or referred to by their birth name (known as 'deadnaming').³⁰ This Bill enforces the misgendering and deadnaming of trans and gender diverse students by denying that their gender could be anything other than what they were assigned at birth, effectively enforcing their harassment.

Trans and gender diverse people already face concerning levels of bullying and harassment. A study of Australian transgender adults found that just 8.8% of respondents had not experienced a form of discrimination or assault in their lifetime.³¹ Schools were identified as the place where young trans and gender diverse people are most likely to experience stigma, harassment, discrimination and bullying.³²

What is heartening about this research, however, is the indication that students reported fewer experiences of stigma, discrimination, harassment and bullying in schools where they felt supported and affirmed by teachers and the school community.³³ When students are visible, supported and affirmed in their identities, their experiences of school are more positive. This Bill therefore contradicts evidence-based approaches to reducing harassment and bullying in NSW schools.

The Bill Prevents a Student's Right to an Education

"[At school] I wasn't able to be myself and that took away my motivation to do almost anything." – Male, 22, Trans Pathways participant

This Bill prevents students' right to an education by creating an environment that increases non-participation rates, and by censoring content that facilitates access to a comprehensive and age-appropriate sexuality education.

An unsafe learning environment severely compromises a students' educational outcomes.³⁴ All students have the right to equal access to education, a right protected by international human rights law, and a right that is already compromised, as evidenced by existing data.³⁵ Trans and gender diverse students who feel unsafe and unsupported in their identity at school are four times more likely to leave school before completion,³⁶ and twice as likely to see their marks drop, compared to trans and gender diverse students who felt safe, supported and affirmed in their school environment.³⁷ By preventing the affirmation of trans students' gender identities, this Bill further promotes non-participation rates of this cohort.

By erasing the existence of trans and gender diverse students from any school curricular, the ability to teach a broad and fulfilling curriculum to all students is limited by the censorship this Bill promotes.

The rights of students to access appropriate sexuality education has been recognised internationally in UNESCO's International Technical Guidance on Sexuality Education.³⁸ Accordingly, studies have indicated that both students and parents have a desire for schools to instruct pupils on sexuality and gender diversity, especially in age-appropriate personal development and sex education curricular.³⁹

Further, banning content and preventing students from accessing comprehensive education represents a concerning over-reach of government intervention into school curricular, and is a decidedly ideological intervention, despite this Bill's intent of outlawing ideological content.

The Bill Compromises the Rights of Children to Form Their Own Views

"I think being trans is really great because it forces us to really consider who we are and what we want out of life in a way that cisgender people never have to. It's great to be able to look at my life and know that I chose this and I control this." – Female, 22, Trans Pathways participant

By allowing parents to unilaterally remove their child from any class teaching "moral and ethical standards, political and social values, and matters of personal wellbeing and identity including gender

and sexuality”,⁴⁰ this Bill further denies the right of children to a well-rounded education that encourages them to form their own views as individual agents.

Article 12 of the Convention on the Rights of the Child, which Australia ratified in 1990, states that “parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”⁴¹

It is the moral right of children to be recognised as individuals, distinct from their parents.⁴² While parents, as guardians, can provide invaluable direction and advice, it is the right of a child, as an independent actor, to have access to a full and well-rounded education to inform their views. Allowing parents to remove their child from a lesson they disagree with holds a parents’ view as superior to that of the child’s, which contradicts the Conventions on the Rights of the Child.⁴³ Therefore, by further enshrining parental primacy, this Bill prevents the moral right of a child to freely express their views and access a full education.

The Bill is Unnecessary: Existing Legislation and Frameworks Ensure Parental Rights

The right of parents to inform the direction of their child’s education is already enshrined in existing legislation and education frameworks, thereby making this Bill superfluous in ensuring parental rights.

The Education Act 1990 states that parents hold the primary responsibility for the education of their children. It also allows for parents to have a choice in how and where their children are educated, and for parents to remove their child from some classes on religious grounds.⁴⁴ The Alice Springs (Mparntwe) Education Declaration (December 2019) further enshrines the importance of parental influence in a child’s education.⁴⁵

It’s also worth noting that this Bill only ensures parental primacy where that parental primacy does not endorse ‘gender fluidity’. By simultaneously ensuring parental primacy, and prohibiting teaching ‘gender fluidity’, this Bill creates unequal rights among parents, where the perspective of parents who oppose ‘gender fluidity’ is privileged over that of parents who support and affirm the existence of trans and gender diverse people.

This Bill is unfounded in its reach. All parents interviewed in a 2016 study supported teaching about the lives of LGBTQ people within age-appropriate curricular.⁴⁶ By prohibiting teachings of ‘gender fluidity’, this Bill prevents the rights of these parents to access the kind of education they would like for their child, therefore contradicting the existing Education Act, which already allows for parents to make that choice.

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