



Australian Government
**Department of Education,
Skills and Employment**

Australian Education Legislation Amendment (Prohibiting the Indoctrination of Children) Bill 2020

Submission from the Department of Education, Skills
and Employment to the Senate Education and
Employment Legislation Committee



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The Department of Education, Skills and Employment welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee (the Committee), as part of the Committee's inquiry into the Australian Education Legislation Amendment (Prohibiting the Indoctrination of Children) Bill 2020 (the Bill).

The Bill proposes to amend the *Australian Education Act 2013* (Education Act) to require the payment of Commonwealth recurrent funding for schooling be subject to the condition that the state or territory has laws in force that are intended to prohibit the indoctrination of children at school. The Bill also amends the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (ACARA Act) to affect the way that ACARA develops the national curriculum and appears to introduce new expectations of a regulatory function in the delivery of school education.

The Department is responsible for administering the Education Act and its subordinate legislation, and supports the Minister for Education and Youth with his responsibilities in relation to the ACARA Act. This submission aims to assist the Committee with contextualising practical considerations if the Bill is enacted.

The amendments to the Education Act

The proposed Bill would impose a condition on the payment of Commonwealth financial assistance to states and territories under the Education Act. To comply with this condition, a State or Territory would need to have in place laws that would:

- prohibit a staff member of a school from promoting partisan views or activities to students when teaching a subject or administering the school's affairs;
- require staff members of a school to provide students with a balanced presentation of opposing views on political, historical and scientific issues;
- enable a court to enforce these laws at the request of a parent or guardian;
- require a school to consult with, and have regard to feedback from, parents or guardians of students of the school to ascertain whether a balanced presentation of opposing views on political, historical and scientific issues is being provided.

Prior to providing a payment of financial assistance to a state or territory under the Education Act, the Commonwealth would need to assess whether or not that state or territory has satisfied the proposed condition relating to laws prohibiting indoctrination in schools. However, the Bill does not include amendments to the Education Act to detail the consequences of non-compliance with the requirements specified in the Bill.

The introduction of this level of specificity and direct oversight of the operation of schools presents significant overreach by the Commonwealth in directing the manner that states and territories, and in turn schools and teachers, provide education to students.

It is also not clear how the conditions listed in the new section 22AA are intended to be monitored in an ongoing way by the Commonwealth so that it could be satisfied compliance was being met. For example, the Bill requires the Commonwealth to ensure anti-indoctrination laws are in place, but it does not require the state or territory to enforce the law.

The Bill also has limited definition of key terms which may result in inconsistent interpretation or unintended consequences. The limited clarity on the scope of key definitions may result in a state or territory interpreting the requirements of the Bill to extend to faith-based schools and therefore religious instruction would be subject to the requirement to provide a balanced presentation of opposing views. The limited clarity may alternatively result in faith-based schools finding themselves defendants to legal challenge if a balanced presentation of opposing views of religious instruction are not provided.

The amendments to the ACARA Act

The other changes proposed in the Bill affect the work of ACARA. ACARA is an independent statutory authority. Its purpose is to be the authoritative source of advice on, and delivery of, national curriculum, assessment and reporting for all Australian education ministers. It is governed by a Board comprised of an independent chair and deputy chair and nominees of all states and territories and sectors, providing a collaborative and expert forum.

The Bill would amend the ACARA Act so that ACARA would be required to perform its functions and exercise its powers to ensure that school education in Australia provides a balanced presentation of opposing views on political, historical and scientific issues. This obligation expressly requires ACARA to ensure that:

- the national curriculum is developed and administered to provide a balanced presentation of opposing views on political, historical and scientific issues, and
- information, resources, support and guidance that promote a balanced presentation of opposing views on political, historical and scientific issues are provided to the teaching profession.

The Bill appears to indicate that ACARA will be required to have day-to-day oversight of functions traditionally managed by state and territory agencies and approved authorities.

Currently ACARA's work and strategic direction is set and agreed by all of Australia's state and territory Education Ministers in the form of the Education Ministers Meeting (formerly the Education Council). While ACARA is tasked with developing and administering the national school curriculum, the Education Ministers Meeting is responsible for approving it. However, the amendments would see ACARA become an entity that has regulatory or compliance oversight for the Education Ministers it currently reports to. It is also unclear in the proposed Bill what assurance or compliance actions would be available to ACARA to fulfil those proposed duties, or what the consequences would be in instances of non-compliance.

Conclusion

The broad scope of the amendments set out in the Bill, and the limited definition of key terms, presents several issues. The requirements of the Bill may present unintended consequence as the requirement to provide a balanced presentation of opposing views may be applied to any part of the national curriculum (even within the limitations of 'political, historical and scientific issues'). There is no guidance on what constitutes an 'opposing view' or a 'balanced presentation', or how they are to be provided and considered.

The Bill does not specify what the consequences would be if states and territories refused, or were unable, to comply with the new condition in the Bill. The lack of specificity in the Bill may generally increase the risk of legal challenge.

Under current constitutional arrangements, state and territory governments are responsible for ensuring the delivery and regulation of schooling to all children of school age in their jurisdictions. The proposed amendments in the Bill may be viewed as significant overreach in the day-to-day operation of schools. The Bill also proposes a core change to the way in which the national curriculum is created and disseminated that may undermine the current consensus by Education Ministers.