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

This submission addresses the *Australian Education Legislation Amendment (Prohibiting the Indoctrination of Children) Bill 2020* (Cth).

This Submission initially contextualises concerns regarding the Bill and then comments on specific features of the proposed legislation. It concludes that the Bill is neither necessary nor appropriate. It further concludes that the Bill is legally and administratively unviable.

Context

Education is a basis of individual and collective flourishing. It involves equipping students with skills, exposing students to ideas and values, and fostering respect for people who do not necessarily share the views or have the same attributes as those of a particular student. On occasion students will encounter ideas that they find confronting. They will encounter people who are different from themselves, for example with –

- different religious, ethnic, political or other affinities
- different physical and intellectual capabilities
- different personal circumstances, such as wealth, parental expectations regarding educational achievement, and advantageous family connections.

That is reflected in a range of international agreements, with the Convention on the Rights of the Child (CROC) for example stating that 'education of the child shall be directed to' –

> (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
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> (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
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> (c) the development of respect for
>
> - the child's parents,
> - his or her own cultural identity, language and values,
> - the national values of the country in which the child is living, the country from which he or she may originate,
> - civilizations different from his or her own;
>
> (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

It is also reflected in Australian frameworks regarding the education of young people, for example Goal 2 of the 2009 Melbourne Declaration on Educational Goals for Young Australians and the Personal & Social Capability facet of the Australian Curriculum.

In making sense of the Bill it is important to recognise that Australia is a pluralist (aka multicultural) society, with a wide range of backgrounds and diversity in family structures (including blended families and families in which both parents are of the same gender).

It is also important to recognise that Commonwealth and other law acknowledges diversity regarding sexual affinity (a same sex affinity is for example not regarded as a disability, a medical disorder or a crime). That law acknowledges diversity in bodies, for example does not

regard intersex status as a disorder that must be 'fixed'. It does respect the choice of individuals to transition from one sex to another, reflecting a recognition that the assignment of sex at birth is not definitive and that the well-being of an individual may be predicated on what the Bill appears to characterise as 'gender fluidity'.

Respect for that pluralism is inherent in a wide range of human rights enactments at the Commonwealth and state/territory level. It is also inherent in enactments and case law that deal with –

- the family,
- the autonomy of individuals (including that of young people through recognition of Gillick Competence about life decisions),
- birth and marriage registration,
- passports and other identity documents,
- employment,
- law enforcement,
- the regulation of health practitioners,
- vilification, and
- education.

As discussed below, Australian and international law recognises the importance of the family and the role of parents or guardians but does not regard parentage as something that trumps all rights of the child. That law does not regard religious adherence as something that trumps the rights of the child or of an adult. It does not enshrine a particular religious doctrine or belief as representing an exclusive truth. It does not privilege any faith by giving specific doctrinal tenets or broader values a freedom from critique. It does not allow one family to determine what is taught to other students and how teaching takes place.

Education that is consistent with the needs of children and the realities of the contemporary economy inevitably involves encounters with ideas (such as evolution, climate change, gender equality, female autonomy and scepticism about magic) that some people dislike or deny. The public education system expressly encourages students to think critically rather than blindly accept statements made by teachers, journalists, other authority figures and members of parliament. The system seeks to build capability rather than stifling individuals in cotton wool.

In making sense of the Bill it is also important to recognise that Australia has a pluralist education system. Importantly, that system has substantial government support (in other words through grants and tax concessions) of private education institutions that might operate under the auspices of a religious entity. Children are not conscripted into state schools. Parents/guardians have scope to send children to non-government schools in which teaching might emphasise values – such as disrespect for gay people and for women – that are inconsistent with law and the values of the broader community.

That teaching, and the expression of doctrine by religious entities, might denigrate anyone who has a same sex affinity (stigmatise a gay teen or gay parent as sick, evil, headed for hellfire). It might feature practice such as 'gay conversion therapy'. It might also denigrate a young person who does not fit into what the Bill appears to assume is a neat binary identity (ie the medically uninformed belief that everyone is either physically 'male' or 'female' and must be restricted to 'male' and 'female' roles) or who experiences a gender dysphoria substantive enough for transition from one gender to another.

In making that comment I note that Australian courts in considering the best interests of the child – which are not necessarily the same as the parents' values – has recognised the lawfulness and appropriateness of gender reassignment. Examples are *Re Alex* (2004) 31 Fam LR 503; *Re Lucy* [2013] FamCA 518; *Re Sam and Terry* [2013] FamCA 563; *Re Jamie* [2013] FamCACF 110; *Re Shane* [2013] FamCA 864; and *Re Kelvin* [2017] FamCAFC 258.

Australian courts have expressly recognised the reality of gender dysphoria; law clearly does not regard gender dysphoria as a fiction or an ideology. Courts have also recognised the reality and legitimacy of a same sex affinity. They do not construe that affinity as an illness or an ideology, irrespective of condemnation by some adherents of a faith or in a religious text.

There is no reason to believe that public schools in Australia are advocating expression of a same sex affinity, indoctrinating primary/secondary students through an exclusive view of climate change or in favour of 'gender fluidity' or promoting gender reassignment. Teaching expressly recognises the diversity of belief. It encourages respect for diversity. It recognises the acknowledgment by Australian law and medical practice that the traditional binary and heterosexual understanding of bodies and roles is both inadequate and contrary to the flourishing of minors and adults. It also expressly recognises diversity of opinion regarding science and encourages critical thinking about complex phenomena such as climate change.

That teaching does not disrespect the role of parents. It does however introduce students to values that may not be endorsed by parents. It does not require students to embrace the values. It does encourage students to question assumptions and to respect the choices and needs of their peers. As such the education system is what we need for a caring and inclusive society. The Bill proposes a regime that is contrary to expectations regarding public education and that, as discussed below, is neither legally nor administratively viable.

The Bill

The following paragraphs address legal and administrative flaws in the Bill that are so serious as to require the Australian Parliament to reject the proposed legislation outright and signal an abhorrence of any similar proposals.

Origin

The Bill appears to be based on the somewhat better drafted and more fully-explained *Education Legislation Amendment (Parental Rights) Bill 2020* (NSW) under the auspices of One Nation MLA Mark Latham. The NSW Bill is currently under consideration by the NSW Legislative Council Portfolio Committee No. 3. As a proposed enactment it is so flawed that it cannot be put into effect.

An observer of the current Bill and of the NSW Bill might be forgiven that neither Senator Hanson nor Mr Latham expect that their proposals will become law. They are instead seeking to gain publicity and reinforce their positioning within small unrepresentative groups by voicing unsubstantiated fears and reprehensible hatreds.

The Explanatory Statement for the Bill states 'This Bill is compatible with human rights as it does not raise any human rights issues' and that 'This Bill does not engage any of the applicable rights or freedoms'. Both claims are demonstrably incorrect; the Bill is contrary to the human rights of children and parents.

The Bill misunderstands Australian education law

The Bill is poorly worded – for example reliance on undefined terms such as 'indoctrination' – and inadequately explained. It appears to be founded on a misunderstanding of current Australian law and the realities of teaching practice.

The Australian, state and territory education enactments, and common law currently do **not** deprive parents of primary responsibility for articulating and reinforcing values and understanding.

The same law does **not** deprive guardians of primary responsibility. Instead the default position is that parents/guardians have primary responsibility. There is no evidence at the Australian and state/territory level of a legislative program to remove that responsibility. There is no requirement under international law to remove responsibility. What we see under existing law is instead an emphasis on what is best for the child and a recognition that the rights of the child sit alongside those of the parent/guardian.

The Bill's characterisation of 'indoctrination' and 'gender fluidity' lacks substance

The Bill in seeking to prohibit 'indoctrination' refers to 'gender fluidity' and 'climate change' as examples of what should be restricted. Importantly, that fluidity' and 'climate change' are examples: the Bill if passed would encourage parents to take schools to court for anything on which there was disagreement.

The terms are not defined. Vagueness is an invitation for dispute, litigation (noting a reference for private enforcement through court orders) and unhappiness.

As things stand parents/guardians who have faith-based or other views that are at odds with the curriculum in Australian public education are free to alert their children that they disagree with what is taught in primary and secondary schools. That guidance might well be reinforced by other relatives, by religious institutions and by influential figures such as Israel Folau.

Just as importantly, parents/guardian have the ability to choose schooling provided by parochial schools. Some of those schools emphasise teaching on the basis of particular texts that feature values that are at odds with the views of most Australians, for example the subordination of women, the denigration of 'unbelievers' and people with a same-sex affinity, or disregard of scientific theories such as evolution and geology.

Given the inadequacy of drafting it is difficult to be definitive about what Senator Hanson is seeking to restrict. I note however dogwhistling regarding gender and sexuality is both repugnant and at odds with Australian law. Australian statute and common law for example recognises the scope for gender reassignment, the irrelevance of gender in many situations and the legitimacy of same-sex relationships despite what appears to be the Bill's assumption regarding heteronormativity. It is also at odds with the lived experience of many Australians, for example of people with a same-sex affinity and of people who legitimately identify as of a different gender in the face of denigration, incomprehension, violence and the hostility inherent in the Bill. There is no reason to believe that people are making life choices about sexual affinity or gender identity for frivolous reasons or that those choices are being determined by a teacher who read Judith Butler rather than John Finnis and St Thomas Aquinas.

The Bill is not necessary

The Bill is not necessary. There is no evidence that decisions are being determined by what is encountered in classrooms. Notably, the Bill does not seek to restrict expression outside the

classroom. That is salient given that many people rely on sources such as the *Daily Telegraph*, Wikipedia, YouTube and Facebook or books in a public library for understanding issues rather than what they encounter in class.

There is no evidence for a prevalent or determinative ideology

The Bill appears to be founded on an unsubstantiated claim that there is consistent indoctrination of an ideology regarding climate change, gender fluidity and other things that are unspecified but disliked by Senator Hanson.

There is no reason to believe that teaching in state schools is a matter of ideology and that the teaching is determinative. As noted above, students are not conscripted into state schools. Parents whose children encounter ideas such as evolution, the age of the earth (including scepticism about a Christian deity creating the world at 9am on 23 October in 4004 BC), the non-subservience of women, the legal validity of same-sex marriage or the idiosyncratic nature of some dietary restrictions are quite free to inform their children that 'we do not believe that' or to enrol the children at a religious school.

Parental distaste for 'gender fluidity' and/or climate change should not dictate what is taught in schools and how it is taught (for example the banning of textbooks that feature claims contrary to the belief of a handful of parents).

Whose parents get to choose the curriculum?

The Bill seeks to enable parents to contest and override the curriculum through litigation. It does not identify which parents determine the curriculum. All parents? All parents at a specific school? All parents across the state? Parents whose views are at odds with most of their peers but who seek publicity by complaining and who seek to override the views of other parents?

It does not provide guidance to courts that would be requested to provide orders where angry, bigoted or merely attention-seeking parents seek to impose their idiosyncratic choices on the curriculum and on the children of their peers.

The Bill is an invitation to discrimination

The lack of care in legal drafting means that some parents/guardians will consider that the legislation prevents the teaching of anything that is different or offensive, including –

- the equality and non-subservience of adult and minor females
- religious pluralism, in other words that respect should be given to faiths that differ from those of the parent/guardian and to people without a religious faith
- scientific explanations such as astronomy (eg that the earth rotates around the sun) and evolution
- the scientific basis and community value of vaccination.

The Bill provides no practical guidance for teachers, administrators and parents.

Inadequate drafting means the Consultation requirement is not viable

From an administrative perspective the Committee should question the requirement for schools at the beginning of each academic year to consult with parents about courses of study that will include teaching on core values and a requirement that the states/territories amend their legislation to enable parents to seek court orders to override the curriculum.

As with the NSW Bill, it is unclear whether that requirement mandates consultation with all parents collectively or with a representative group of parents or just with adherents of Senator Hanson?

What form will consultation take? Will it involve parents being able to determine the curriculum for only their children or for other children (ie the children of parents/guardians who do not have the same background and same values as another family, something that is both legal and quite common in a multicultural society)? Students will be able to opt out of biology classes, geology classes, physics classes and history classes on the basis that some aspect of the teaching is inconsistent with religious doctrine or the parent's personal values? That is not in the best interests of the child and is contrary to community expectations regarding educational goals.

It is worth emphasising again that the Bill is centred on but not restricted to fluidity and climate change. Instead it appears to extend to **any** teaching that deals with what the unidentified parents consider to be contrary to their values. Such vagueness is a recipe for litigation. It may well result in teachers, a valuable resource, leaving the education system in response to unsubstantiated complaints/demands by a handful of parents whose views are not shared by most of the community. There is no consensus within Australia about the authority of religious doctrine or the tenets of particular faiths/denominations. The basis for elevating one family's convictions over that of another family is unclear. Allowing one family to determine the curriculum is contrary to social harmony, will result in unnecessary litigation and is inconsistent with both Australian and state law.

Conclusion

The Bill as presented to the Parliament is neither necessary nor coherent. It is so deficient as to preclude implementation in ways that most of the community would consider to be legitimate. It appears likely to be exploited by a minority of parents at the expense of other families and without endorsement by the overall community. It disregards the international human rights agreements. It egregiously ignores Commonwealth and state/territory law. It will foster disharmony and litigation. It is a manifestation of 'gesture politics' rather than a practical response to an actual problem. Most importantly, it will not meet the needs of children in public and private schools, in other words people with rights to explore, grow and not be condemned because they are different to the beliefs/values of a minority whose assertion of authority is based on religious dogma that is not accepted by most Australians.