



Luke Beck
PhD Candidate and Associate, Constitutional Reform Unit
Sydney Law School
UNIVERSITY OF SYDNEY

27 February 2013

**Submission to the Education Committee regarding the Australian Education Bill
2012**

I make this submission in my capacity as a private citizen.

I wish to bring to the Committee's attention the possibility that the Commonwealth Parliament lacks power to pass the Australian Education Bill 2012.

The *Australian Constitution* gives the Parliament power to make 'laws' with respect to various subject matters. The Bill, if enacted, may not really be a 'law'.

Clause 10 of the Bill provides:

10 Act does not create legally enforceable obligations etc.

(1) This Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

(2) A failure to comply with this Act does not affect the validity of any decision, and is not a ground for the review or challenge of any decision.

If clause 10 means what it says, then it seems that neither the Bill as a whole nor any of its individual provisions, if enacted, would be a 'law' at all. The Bill creates no rights or duties and compliance with its provisions is not required. The Bill, as a matter of legal substance, does nothing.

What purports to be legislation must have some sort of legal effect or consequence in order to be a 'law'. Because the Bill, if enacted, would have no legal effect or consequence whatsoever it is doubtful that it could be considered a 'law'. If this is right, it follows that the Parliament has no power to enact the Bill.

I trust this submission is of assistance to the Committee

Yours sincerely

Luke Beck
BJuris, LLB(Hons), LLM
PhD Candidate and Associate, Constitutional Reform Unit
Sydney Law School