



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC:JWas180521

18 May 2021

The Hon Mark Latham MLC
Chair
Portfolio Committee No. 3 – Education
Parliament House, Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee3@parliament.nsw.gov.au

Dear Mr Latham,

Education Legislation Amendment (Parental Rights) Bill 2020

The Law Society gave evidence to the Portfolio Committee No. 3 – Education inquiry into the Education Legislation Amendment (Parental Rights) Bill 2020 ('the Bill') on 21 April 2021. Mr Kirk McKenzie, a member of the Law Society's Human Rights Committee, represented the Law Society at the hearing.

Two of the questions from Portfolio Committee No. 3 were taken on notice by the Law Society at the hearing. The Law Society's responses are set out below.

1. At page [62] of the hearing transcript dated 21 April 2021, the Hon. Courtney Houssos asked:

"I want to ask a question of Mr Kirk McKenzie of the Law Society. We have received a submission from the Institute for Civil Society. I do not expect that you have all read all of the other submissions, but I did just want to ask you a couple of questions about that. They recommend an alternate, narrower definition of matters of parental primacy that says:

- (a) moral and ethical standards;**
- (b) matters of personal identity including gender identity and sexual identity; and**
- (c) matters of sexuality including sexual activity, sexual orientation and sexual health.**

I understand that the Law Society's submission specifically says that you are opposed because the current definition is clear. Do you think this one is a bit clearer?"

In the Law Society's view, the alternative definition of "matters of parental primacy" cited by Ms Houssos does not adequately address the concerns raised in our submission to Portfolio Committee No. 3 dated 25 February 2021. Our submission stated that while the Bill included a definition of "matters of parental primacy", it is an inherently subjective term, making any determination of which part of a curriculum falls with the definition a near-impossible task for schools to undertake. The alternative definition may be narrower but remains vague and subjective.

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Our submission also noted that the Bill did not appear to envisage or make provision for a scenario where a child's parents disagree on whether the child should receive instruction on something that is purportedly a matter of parental primacy. Given the important role that the term "matters of parental primacy" has in the Bill, and the consequences that would apply to teachers who fail to comply with the requirements of the Bill, this ambiguity is of significant concern. In addition, the Bill's focus on accommodating parental views in relation to "matters of parental primacy" may interfere with a child's ability to exercise their own right to freedom of thought, conscience and religion in a manner consistent with their evolving capacities,¹ for example where the child has developed their own views in the later years of high school.

2. At page [62] of the hearing transcript dated 21 April 2021, the Hon. Courtney Houssos asked:

"This is to the panel as a whole but I will start with you, Mr McKenzie. This submission also talks about the fact that they believe we have not put our international obligations around parental primacy—parental rights in terms of education—into practice. It has not been—I think "operationalised" was the word. They suggest that parents should be allowed to use this section in the Education Act to remove their children if they need to in an easier way, perhaps through an online portal or through an online form or something like that, which would actually allow parents to do it in a more non-confrontational way. I am interested in your thoughts on that."

At this stage, we do not have sufficient information about the amendments to the Education Act that the proposal referred to by Ms Houssos would entail, the policy rationale and any apparent problems that the proposal might address, and resourcing implications, to provide an informed view.

Should you have any questions or require further information, please contact Andrew Small, Policy Lawyer, on 02 9926 0252 or email andrew.small@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Juliana Warner', followed by a horizontal line extending to the right.

Juliana Warner
President

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 16 January 1990) art 14.