



Pitt Street
Uniting Church

264 Pitt Street Sydney
NSW 2000
Telephone: 02 9267-3614
office@pittstreetuniting.org.au
ABN 83 552 784 476

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Committee Secretary
Portfolio Committee No. 3 – Education
Upper House Committees
Legislative Council
Parliament of New South Wales
Macquarie St
SYDNEY NSW 2000
[Submission sent by email to:
PortfolioCommittee3@parliament.nsw.gov.au]

Dear Members

Submission re: Inquiry into Education Legislation Amendment (Parental Rights) Bill 2020

Thank you for the invitation of 19 January 2021 received from the Hon. Mark Latham MLC to make a submission on the above Amendment Bill. We believe that the Bill raises important matters for our society and the ways in which we seek to ensure respect, dignity, and fair participation for all citizens. In a democratic and pluralist society that involves a careful balancing of some competing claims.

Founded in 1833 as NSW's first congregationalist church, Pitt Street Uniting Church is a congregation of the Uniting Church in Australia. Located in the heart of Sydney we are a vibrant Christian community seeking to follow the Way of Jesus in all areas of our lives. Our concerns include social justice, human rights, diversity and inclusion, and ecological sustainability. Our "specialist knowledge" about the Committee's Terms of Reference and the Amendment Bill, is that as a church community we have worked in different ways with the LGBTIQ communities in NSW for the past 40 years. This has included, though is not limited to, the significant ongoing committed LGBTIQ membership of our Pitt Street congregation and denomination.

Having studied the Amendment Bill as presented in the NSW Legislative Council, the Pitt Street Uniting Church is unable to support the Bill and sees almost no possibility for reasonable amendments. We have therefore concluded that that the Bill should be withdrawn or not supported by the Parliament of New South Wales. The balance of this submission will outline the three reasons why we have reached this conclusion. The first

reason is based on an understanding of our Christian faith tradition. Second, we refer to the reality of the lives of transgender and other gender diverse people, both from their lived experience and medical and scientific understanding. The final reason arises from serious concerns we have about aspects of the wording of the Amendment Bill.

Our first reason arises from an understanding of the Christian faith. At the founding of the Uniting Church in Australia a visionary 1977 Statement to the Nation declared that:

*We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.*ⁱ

A later national Uniting Church statement (2006) spelt out the theological basis for human rights in the Church's doctrine of creation whereby all people (and other forms of life) are created in the image of a loving God:

*...the Uniting Church believes that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.*ⁱⁱ

This understanding is informed by biblical themes commencing with the creation stories in Genesis in which God creates humankind in God's own image, and "God saw everything that God had made, and indeed, it was very good" (Gen 1:31). Jesus' ministry had an emphasis on welcoming all people, especially those who had been marginalised and rejected, such as Samaritans who had been the enemies of Jewish people. As the writer of Luke recounts, a lawyer asks Jesus a seemingly simple question: "Who is neighbour?" (Luke 10:29). Jesus replies with the parable of the Good Samaritan, challenging stereotypical attitudes and demonstrating that neighbourliness is not the possession of any particular social, religious, or political group (Luke 10:30-37). Writing to the fledgling church communities living in the province of Galatia (part of modern-day Turkey) St Paul boldly declares that "There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for you are all one in Christ Jesus" (Galatians 3:28).

Reflection on these, and many other biblical themes, has led the Pitt Street Uniting Church, and the Uniting Church in general, to welcome LGBTIQ in all areas of our life and witness, including leadership positions. We regard LGBTIQ people as part of God's good creation, making positive contributions society as good neighbours, and bearing witness to the reality that "in Christ" human barriers and distinctions are "no longer".

We affirm that transgender and other gender diverse people are created in the image of God, and no less than any other persons are a reflection of God.ⁱⁱⁱ We see the glory of God in flourishing human beings. To illustrate the overall point made in the 2006 statement, when

we declare that “every person is precious” (emphasis added) and “each person’s life and rights need to be protected” (emphasis added) we actively include transgender and other gender diverse people, at the different stages of their lives, their family members and partners. This is discussed further below but the use of the term “gender fluidity” in the Amendment Bill, in our view, detracts from the primary moral responsibility we believe is incumbent on all of us, including the Parliament, to respect the God-given dignity and common humanity of all persons.

Our second reason for not supporting the Bill is that in focussing on “gender fluidity” it denies the reality of the lives of transgender and other gender diverse people. The Uniting Church LGBTIQ Network has published resources which address the situation of LGBTIQ people, include on matters of gender diversity.^{iv} They observe that:

[Gender diversity] is not a mental or other health problem – although, as with other human beings, gender diverse people may have various health needs. Gender identity is not a choice and to imply otherwise to transgender and non-binary people is highly offensive and can be very destructive.^v

This has been our pastoral experience, namely that being transgender or gender diverse is a deep-seated part of an individual’s being. Gender identity differentiation, like sexual orientation, does not arise because there are education and information resources made available in a school setting, counselling, or elsewhere. This is the lived experience which transgender people are beginning to share, including different parts of the Christian church.^{vi}

The Australian Professional Association for Trans Health (AusPATH) is Australia’s peak body for professionals involved in the health, rights, and well-being of trans, gender diverse and non-binary people.^{vii} Among other resources they provide standards of care for health professionals working with transgender and other gender diverse people. As the Royal Australian College of General Practitioners (RACGP) have noted it is very difficult to estimate how many people are transgender or gender diverse.^{viii} The College also points out that “Individuals who identify as transgender are vulnerable, and have higher rates of discrimination, depression and suicidality, compared with the general population.”^{ix} One of our concerns if the Bill were to be supported by the Parliament, is that the vulnerability and the associated harm would increase.

This information, from both lived experience and medical authorities, links to our third and final reason for not supporting the Amendment Bill, namely that the definition of “gender fluidity” seems both unclear and impossible to enforce.

We have noted that the overall object of the Bill is contained in the Long Title as follows:

...to prohibit schools, teachers, and training courses from teaching gender fluidity, and for other purposes.^x

Most of our submission focusses on the effort to achieve a legislative prohibition on “teaching gender fluidity.” Schedule One of the Bill proposes additional definitions for the Education Act 1990. The following definition of “gender fluidity” is offered in the Bill:

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.^{xi}

The attempt to legislatively define the extremely complex relations between biological sex, gender identity and social constructions related to sex and gender reads as being both clumsy and inappropriate. There is the general question of whether Parliaments should aim to enshrine in legislation concepts which have been and continue to undergo re-evaluation by medical and other health care professionals and scientific researchers. For example, the proposed definition includes a reference to “disorders”.

It is worth noting that the eleventh edition of the World Health Organisation’s (WHO) International Classification of Diseases (ICD), approved by the World Health Assembly May 2019, has moved trans-related categories from the chapter on “Mental and Behavioural Disorders” to a chapter on “Sexual Health”.^{xii} ICD is the diagnostic classification standard for all clinical and research purposes. ICD defines the universe of diseases, disorders, injuries, and other related health conditions.

Equally the fifth edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, issued in 2013, removed all references to “gender disorder” and introduced a new category named as “gender dysphoria”.^{xiii} The RACGP have provided background information on the medical and scientific grounds for that change.^{xiv} A major intent of the change moves from the situation of being transgender or gender diverse, *per se*, to the ways in which being transgender or gender diverse might be responded to. “Gender fluidity” is not defined in either ICD 11 or DSM 5. The significance of this point is that the Amendment Bill is proposing that the Parliament of New South Wales define something which the leading medical and health authorities have not done.

It might be objected that the Pitt Street Uniting Church is not qualified to be making such observations. It is true that we are not a medical or health organisation. But our practices are informed by the best medical and scientific information in several ways. In 2020 our decision to not gather face-to-face for Sunday worship was guided by the medical advice. Actions that we have taken to reduce our carbon footprint is likewise guided by the scientific advice on climate change. Our pastoral care and justice advocacy for LGBTIQ people is partly informed by more recent scientific understandings which do not pathologise individuals for their sexual orientation, gender identity or intersex status.

In addition to the principal object of the Bill with regard to “gender fluidity”, we have not focussed on the second component of the Bill which is to enshrine the principle of “parental primacy” across the school curriculum and not only in the matter of “gender fluidity”. This is stated as object (a) in the overview of the Bill as follows:

to clarify that parents and not schools are primarily responsible for the development and formation of their children in relation to core values such as ethical and moral standards, social and political values and an understanding of personal identity, including in relation to gender and sexuality.^{xv}

As a local congregation which includes numerous parents and many members of the teaching profession we note that this object is extremely broad. It could relate to the teaching of matters such as the scientific theory of evolution, approaches to climate change, the use of vaccinations and attitudes to same-sex marriage. The draft provisions are so broad that classrooms could become a regular site of conflict and disruption, rather than places of learning which respect the professional skills of classroom teachers, curriculum designers and agreed content of many subjects. We believe it would be unwise for the Parliament to legislate in this manner and that the current Education Act 1990 (and related Acts) provide sufficient protections for parents in the schooling of their children in NSW.

In conclusion, we believe that if passed by the Parliament, the Amendment Bill would not enhance “parental rights” in a manner consistent with a democratic and pluralist polity, but would function in a seriously destructive manner to the health and wellbeing of younger transgender and other gender diverse people and their families.

Thank you for the opportunity to make a submission and we wish the Committee members well in your deliberations on this important Bill as you report back to your parliamentary colleagues. In making this submission we agree that the submission may be published in full, on the Committee website, and our names and positions included.

Yours sincerely



Gillian Hunt and Geoff Maddox
CHAIRPERSONS



Revd Karyn Burchell-Thomas and Revd Gareth Thomas-Burchell
MINISTERS-IN-PLACEMENT (Interim)

i For a comprehensive compendium of Uniting Church statements on society, including human rights and dignity, see Cynthia Coghill and Elenie Poulos (Eds), *For a World Reconciled: Justice Statements from the Uniting Church in Australia 1977-2015*, Sydney: Uniting Church in Australia Assembly, 2016, p.7.

ii Ibid., p. 127.

iii Our statement of welcome at each Sunday gathering also includes gay, lesbian, bisexual and intersex people, but they are not within the scope of the Amendment Bill.

iv Claire Allen, *Gender, Opening and Affirming Congregations*, Uniting Church LGBTIQ Network, 2018.
<https://www.unitingnetworkaustralia.org.au/open-and-affirming-project/> [Accessed 12 Feb. 2021.]

v Ibid.

vi For example Christina Beardsley, Michelle O'Brien, *This Is My Body: Hearing the Theology of Transgender Christians*. London: Darton, Longman and Todd, 2016.

vii AusPATH, <https://auspath.org/about/> [Accessed 20 Feb. 2021.]

viii RACP, <https://www.racgp.org.au/afp/2015/november/gender-dysphoria/> [Accessed 20 Feb. 2021.]

ix Ibid.

x Long Title, Education Legislation Amendment (Parental Rights) Bill 2020.

xi Ibid. Schedule 1 Amendment of Education Act 1990 No 8, page 3.

xii "[World Health Assembly Update, 25 May 2019](#)" Geneva, Switzerland: WHO. 25 May 2019. [Accessed 12 Feb. 2021.]

xiii <https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions> [Accessed 12 Feb. 2021.]

xiv RACGP, <https://www.racgp.org.au/afp/2015/november/gender-dysphoria/> [Accessed 12 Feb. 2021.]

xv Education Legislation Amendment (Parental Rights) Bill 2020, Explanatory Note.

We record our thanks to Warren Talbot for background research and drafting.