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The Hon. Mark Speakman SC MP
Attorney General of NSW
52 Martin Place
SYDNEY NSW 2000

Via email (NSW AG's Website upload)

Dear Mr Speakman

THE EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020

Australian Lawyers for Human Rights (**ALHR**) writes to raise concern about the *Education Legislation Amendment (Parental Rights) Bill 2020* (the **Bill**), proposed by Mark Latham as a private member's bill.

We note that the long title of the Bill states that it will create an:

Act to amend the Education Act 1990, the Education Standards Authority Act 2013 and the Teacher Accreditation Act 2004 to provide that schools must recognise that parents are primarily responsible for the development and formation of moral and ethical standards and social and political values in their children, including an understanding of personal identity and questions of gender and sexuality and to prohibit schools, teachers, and training courses from teaching gender fluidity, and for other purposes.

In effect, the Bill proposes a law that will

- (a) Prohibit schools from teaching that trans and gender diverse people exist and should be treated with respect for their inherent dignity and right to equality
- (b) Prohibit school counsellors from affirming a trans or gender diverse student or providing them with any support or referrals to gender affirming support.
- (c) Put teachers at risk of losing their job when they support a trans or gender diverse student in affirming their identity.

- (d) Allow parents to deny their children access to lessons in public schools that are consistent with international human rights standards and may contradict their political, social or personal values, including their views about LGBTIQ+ people.
- (e) Require schools to present discredited counter narratives when teaching classes like science or history.

The Bill flies in the face of:

1. law and policies which direct curricula in NSW (and across Australia);
2. ignores the fact that LGBT young people remain some of our most vulnerable to abuse, harassment and violence; and
3. the human right of LGBT young people to learn in inclusive, supportive environments, free from discrimination, which are enshrined in international human rights instruments to which Australia is a party.

There is no evidence base to the Bill

The Bill purports to remedy an alleged issue in NSW that teachers in schools ‘teach gender fluidity’. But this is not the case. The data on which this claim is made is non-existent. Teachers are obliged by law and subsidiary codes of ethics to honour the identities of children as they identify.¹

This does not leave out girls and boys, but rather creates space for the diverse ways in which other children are telling us that they identify.

Teachers are also obliged under the National Quality Framework not to humiliate, discriminate or exclude children from educational spaces, or exclude children from curricula to which the teachers are bound to use in educational settings (for students aged up to the age of 6 years).

Counseling support in educational settings is also not targeted to children’s identities. It is in place to support mental health experiences of children - that arise largely as a consequence of exclusion, bullying or harassment. Those experiences adversely impact children’s learning, and ultimately their cognitive development, stymying literacy and numeracy.

In ALHR’s view, should it become law, the Bill will risk worsening academic outcomes, including NAPLAN results, because vulnerable children will struggle even further from a lack of support within what are all too often already precarious educational experiences.

Discrimination of the kind contemplated by the Bill is measured on the world stage.^{2,3} ALHR urges the New South Wales Government to reject and publicly condemn the Bill in its

¹ National Quality Standard and Assessment and Rating, QA 1, https://www.acecqa.gov.au/sites/default/files/2020-02/Guide-to-the-NQF-3-Assessment-and-rating_1.pdf

² Human Rights Watch: The Education Deficit: Failures to Protect and Fulfill the Right to Education through Global Development Agendas

³ Innocence Report Card, <https://www.unicef-irc.org/publications/series/report-card/>

entirety. There is no justification for support of a Bill that is at odds with international human rights standards and at its core seeks to lower those standards by encouraging exclusion, harassment and discrimination that affects children's overall learning outcomes.

The early childhood sector is embedded within the National Quality Framework in which states and territories have legislated uniform laws. Under this National Law, inclusion, with no exceptions, is fundamental to all children's learning.⁴

The Bill consequently poses a risk to New South Wales's credibility in what is a national educational curricula developed using empirical, best practice in pedagogy, that adopts scientific bases, not popular opinions from lay observers like Mr. Latham.

LGBT students are at risk

LGBT students represent a significant minority population: 10% of students are same-sex attracted, 4% of students are trans and gender diverse and 1.7% of students are intersex.⁵

A La Trobe University study of 3,134 same-sex-attracted and gender questioning (SSAGQ) young people, *Writing Themselves In 3*, found that:

- (a) 10% of young people reported that their school did not provide any form of Sexuality Education at all;
- (b) 40% attended a school with no social or structural support features for sexual difference;
- (c) only 19% of young people attended a school that was supportive of their sexuality; and
- (d) over a third described their school as homophobic.⁶

A survey of 564 LGBTI individuals in 2015 by the Bully Zero Australia Foundation reported that:

- (a) Over 50% of same-sex-attracted or gender diverse young people in Australia have experienced verbal abuse;
- (b) Over 15% of same-sex-attracted or gender diverse young people in Australia have experienced physical abuse; and
- (c) Over 70% of these homophobic and transphobic incidents take place in schools.⁷

Bullying and discrimination can impact on young people's mental health, self-esteem and sense of safety. This can in turn affect attendance, concentration and academic achievement.

The Beyond Blue report *From Blues to Rainbows* on mental health and wellbeing of Australian trans and gender diverse young people found that almost two thirds of the young people had experienced verbal abuse in response to their gender presentation or non-

⁴ Schedule National Quality Standard, *Education and Care Services National Regulations* [2011-653]

⁵ Radcliffe, J. Ward, R. Scott, M. Richardson, S. 2013. *Safe Schools Do Better: Supporting sexual diversity, intersex and gender diversity in schools*. Safe Schools Coalition Australia

⁶ Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J., & Mitchell, A. 2010. *Writing themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, 79.

⁷ Bully Zero Australia Foundation. 2017. *What is Homophobic Bullying?* accessed at <http://bzaf.org.au/homophobic-bullying/> on 29 March 2017

conformity, and one fifth had experienced physical abuse. Over 90% of young people who experienced physical abuse had thought about suicide in response to their experience.⁸

Children's right are human rights

As a party to) the *United Nations Convention on the Rights of the Child*⁹ (the **CRC**), New South Wales is obliged to ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The principle of the best interests of the child is one of the fundamental principles of the CRC underpinning the interpretation of all children's rights and freedoms. In ALHR's view the Bill is inconsistent with this principle.

Further, pursuant to the CRC New South Wales has committed to taking all appropriate measures to ensure children are protected against all forms of discrimination, irrespective of their gender or sexuality¹⁰ and to ensure children have access to information aimed at the promotion of their physical and mental health¹¹.

Australia has also committed to protecting children from physical or mental abuse when they are in care¹² and recognising the rights of the child to the enjoyment of the highest attainable standard of health through education.¹³ Homophobia and transphobia in Australia remain barriers to the realisation of these human rights.

Australia signed the CRC very soon after its inception and the Convention remains the most ratified international human rights law convention. It follows that children's rights as set out in the CRC reflect strong, universally accepted minimum standards

Research demonstrates that social inclusion must be embedded into the school curriculum, in programs and policies. *Writing Themselves In 3* found that young people who attended a school that was supportive, rather than homophobic, were less likely to self-harm and suicide.¹⁴ Research from *Beyond Blue* identifies this population as needing targeted and tailored support at school:

*Inclusive schools were those where leadership and teachers tried to address students with their preferred pronouns, were flexible about uniform and toilet arrangements, took a stand against bullying, and aimed to be accommodating to the individual's needs.*¹⁵

We urge you to come out publicly in support of LGBT children and state that you do not

⁸ Smith, E., Jones, T., Ward, R., Dixon, J., Mitchell, A., & Hillier, L. 2014. From Blues to Rainbows: Mental Health and Wellbeing of gender diverse and transgender young people in Australia. Melbourne: The Australian Research Centre in Sex, Health, and Society, 12

⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

¹⁰ Ibid Article 2

¹¹ Ibid Article 17

¹² Ibid Article 19

¹³ Ibid Article 24

¹⁴ Ibid above at 3.

¹⁵ Smith, E., Jones, T., Ward, R., Dixon, J., Mitchell, A., & Hillier, L. 2014. From Blues to Rainbows: Mental Health and Wellbeing of gender diverse and transgender young people in Australia. Melbourne: The Australian Research Centre in Sex, Health, and Society, 12

tolerate homophobia or transphobia in schools. We ask you to reject Mr Latham's bill and stand for children's rights, best practice pedagogy and safety for all children in educational settings.

Over recent years, Australia has made progress in making our country safer for lesbian, gay, bisexual and transgender (**LGBT**) people, with strengthened anti-discrimination protections in the *Sex Discrimination Act 1984* (Cth), the removal of the 'gay panic' defence from various state legislation across Australia (including in New South Wales¹⁶), the passing of bills across states and territories allowing same-sex couples to adopt children and access surrogacy, and amendments to the *Marriage Act 1954* (Cth) in 2017, as a consequence of a strong "yes" vote in a national survey.

Queensland has become the first state in Australia to criminalise gay conversion therapy, while Victoria and the Australian Capital Territory have also committed to banning the practise. While trans-supportive birth certificate legislation is yet to pass in New South Wales, many states have made laws to support the trans and gender diverse community's interest with regard to obtaining accurate identity documents.

In these circumstances it is very important that leaders like yourself as well as the entire New South Wales Government, support the LGBT community, particularly those within that community who are young, vulnerable and enduring an extremely difficult time in their lives.

We would be grateful if you could contact us in order to arrange a meeting to further discuss ALHR's concerns about the very serious human rights implications of the Bill.

Yours sincerely



Kerry Weste

President

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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

¹⁶ *Crimes Amendment (Provocation) Act 2014* (NSW)