RESPECTING DIFFERENCE: AN ANALYSIS OF THE AUSTRALIAN SAFE SCHOOLS PROGRAM AND PARENTAL RIGHTS IN EDUCATION

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ABSTRACT

Following its nationwide implementation across hundreds of schools in Australia, the Safe Schools program has been the subject of much controversy. While concerns have been raised in relation to the program's teachings on topics such as gender and sexual diversity, a question that has featured little in the public discourse is how the program challenges the international prior right of parents to educate their children. In light of this issue, this article examines the development and scope of parental rights under the common law and international law, and the extent to which the Safe Schools program is consistent with such protection. An analysis of the international human rights instruments and case law reveals that, while the Safe Schools program seeks to address an important issue of bullying of LGBTIQ students, the program challenges the rights of parents to educate their children, by teaching material inconsistent with the desired instruction of parents, disallowing exemptions for conscientious parents, unnecessarily interfering with the family unit, and failing to afford transparency in education. In this way, this article highlights how the Safe Schools program contravenes parental rights under a number of international instruments to which Australia is signatory, and recommends the adoption of a number of reformative measures to ensure compliance. Amidst calls for a new anti-bullying scheme to replace the Safe Schools program, this research will be useful in guiding the content, structure and implementation of future school programs, consistent with the rights of parents under international law.

The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

- The Supreme Court of the United States, 1925[1]

I INTRODUCTION

The Safe Schools program has sparked much debate since its nationwide expansion to Australian schools in 2013. Some have argued that the program is necessary to combat bullying of LGBTIQ students by fostering understanding and tolerance of those that experience same-sex attraction and gender dysphoria. Others have argued that the program promotes an ideological agenda that is politically charged, hypersexualised and insufficiently grounded in reliable social science. Amongst the melee of opposing views, however, a worrying challenge has taken place, one that has gone largely unnoticed in the public sphere despite it affecting all families with children: the State challenge to the prior right of parents to educate their children.

The prior right of parents to educate their children is a right that has been protected for centuries under the common law and international law,[2] and is expressly recognised in the *Universal Declaration of Human Rights* ('UDHR').[3] The purpose of the right is to ensure that parents maintain the primary role of educating their children, whilst still being able to delegate that role to the state.[4] Nevertheless, a gradual challenge to parental rights has taken place in recent decades, with the Safe Schools program emerging as yet another symptom of

[1] *Pierce, Governor of Oregon, et al v Society of the Sisters of the Holy Names of Jesus and Mary* (1925) 268 US 510, 535; William G Ross, 'The Contemporary Significance of Meyer and Pierce for Parental Rights Issues Involving Education' (2001) 34(1) *Akron Law Review* 177, 178.

[2] ICCPR art 18(4) provides that State Parties must 'have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'. The United Nations Human Rights Committee further elaborates on this right: 'The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1)… The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted': United Nations Human Rights Committee, CCPR General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.

[3] *Universal Declaration of Human Rights* ('UDHR'), GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948), art 26(3).

[4] Johannes Morsink, *Pennsylvania Studies in Human Rights: The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press, 2010) 263-269.

the larger scale interference of the state in the lives of families.[5] In light of this challenge, this article will explore how the rights of parents developed historically, and are currently enshrined under international law (Part II). It will also explore the context in which parental rights are relevant to the Safe Schools program (Part III). Following this background, an examination will then follow on the ways in which the program challenges parental rights under the common law and international law, in disrespecting the desired instruction of parents (Part IV), disallowing exemptions for conscientious parents (Part V), unnecessarily interfering with the family unit (Part VI) and failing to afford to parents transparency in education (Part VII).[6] Before undertaking this analysis, however, the historical development of parental rights in common law and jurisprudence must first be considered, so as to best understand the scope and rationale of parental rights in education.

II HISTORICAL DEVELOPMENT OF PARENTAL RIGHTS

A *Parental Rights in Common Law and Jurisprudence*

For centuries, there has been a strong presumption in favour of parents to direct and control the upbringing of their children.[7] This presumption was recognised by many of the great legal philosophers and jurists, including John Locke, John Stuart Mill, Hugo Grotius, Samuel von Pufendorf and William Blackstone.[8] As Locke observed, the care and education of children is

[5] For more information on the larger scale interference by the State in the lives of families, see: William D Gairdner, *The War Against the Family: A Parent Speaks Out on the Political, Economic, and Social Policies That Threaten Us All* (BPS Books, 2007).

[6] Although parental rights are generally discussed in the context of public school education, the international human rights instruments to which Australia is party do not make a distinction between parental rights in public and private schools. Questions arise as to whether the same protection ought to be afforded to parents whose children are enrolled in private schools, or whether, by subjecting themselves to the relevant private school's policies and curriculum, parents forfeit their rights regarding their children's education to the school. In the context of this discussion, the vast majority of Safe Schools members are public schools, and so this issue need not be addressed. For more information on parental rights and the public/private distinction, see: J Joy Cumming and Ralph D Mawdsley, 'The prevailing voice in choice in schooling: The balancing rights of parents, children and the courts' (2013) 18(1) *International Journal of Law & Education* 39.

[7] John C Hogan and Mortimer D Schwartz, 'In loco parentis in the United States 1765–1985' (1987) 8(3) *The Journal of Legal History* 260, 260; In *Wisconsin v Yoder* (1972) 406 US 205, for example, Amish parents were held not to have been in violation of Wisconsin compulsory attendance laws for refusing to send their child to school beyond the age of sixteen. The US Supreme Court acknowledged the 'strong tradition [of parental rights]… in the history and culture of Western civilisation', and affirmed the primary role of parents in the education of their children as 'established beyond debate': ibid 232.

[8] Hogan and Schwartz, above n 7, 260; In the words of Sir William Blackstone: 'The power of parents over their children is derived from the former consideration, their duty; this authority being given them, partly to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it': William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) 452.

a duty so incumbent on parents, that nothing can absolve them from taking care of it.[9] This duty of parents to provide for their children is what gives rise to the authority that parents possess over them; an authority that comes before that asserted by anyone else.[10] In this way, parents have the prior right to direct and control the upbringing of their children, a right which must be respected by others, especially public authorities.[11] As declared by the US Supreme Court in *Pierce v Society of Sisters*:

> [The State must not] unreasonably interfere with the liberty of parents and guardians to direct the upbringing and education of children… The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.[12]

On this basis, although the State may conclude that it knows what is best for children, and seek to educate them accordingly, the right remains with the parents, as they are most likely to appreciate the best interests of their children.[13] As contemporary liberal theorist William Galston observes, although parents often fail to choose wisely, they are still in the best position to take care of their children and make decisions for their well-being.[14] Parents generally understand their children's individual traits better than public authorities, and 'they are not subject to the homogenizing imperatives of even the best bureaucracies in the modern

[9] John Locke, *The second treatise on civil government* (Prometheus Books, 6th ed, 1986) [67].
[10] Ibid. This is not to suggest that the state does not have authority to interfere with parental rights at all. Rather, the common law has long recognised that there may be circumstances in which a parent forfeits their rights of education over children, particularly in cases of child abuse and neglect. *In Re J (Child's Religious Upbringing and Circumcision)* [1999] 2 FLR 67, for example, the New Zealand Court of Appeal held that: 'We define the scope of the parental right under section 15 of the Bill of Rights Act to manifest their religion in practice so as to exclude doing or omitting anything likely to place at risk the life, health or welfare of their children'. Furthermore, common law has also supported the proposition that the state may intervene where the child would not otherwise receive a minimum standard of education: *Re The Seven P Children*, unreported, Family Court, Inglis J QC, 8 October 1991. For a more comprehensive discussion on the limits of parental authority, see: Rex Adhar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2nd ed, 2013) 205-207.
[11] Note, however, that there is only limited use seeking to resolve tensions between parents and the state by subordinating one party's right to the other. Perhaps a better approach would be to seek to reconcile the competing claims, such that state goals may be realised while at the same time, parents' educational decisions are observed. This is precisely the approach that the Supreme Court of Canada failed to adopt in the *Drummondville Parents' Case,* resulting in a trumping of state interests over that of parental rights: below n 128.
[12] *Pierce, Governor of Oregon, et al. v Society of the Sisters of the Holy Names of Jesus and Mary* (1925) 268 US 510, 535; Ross, above n 1.
[13] *B(R) v Children's Aid Society of Metropolitan Toronto* [1995] 1 SCR 315, 317-318.
[14] William A Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge University Press, 2002) 100.

state.'[15] In practice, the legal system must create a presumption in one direction or the other, and the case for a presumption in favour of parents is strong.[16]

However, this does not mean that the task of education cannot be undertaken by others. The common law has long understood that parents may choose to delegate some of their duties for their child's upbringing, while at the same time retaining authority.[17] This is known as the doctrine of *parental delegation.*[18] In regard to the doctrine, Pufendorf wrote that although the obligation to educate children belongs to parents, 'this does not prevent the direction… from being entrusted to another, if the advantage or need of the child require, with the understanding however that the parent reserves to himself the oversight of the person so delegated.'[19] Consequently, although parents may choose to delegate their authority to another person or institution, such as to the State for education, the right still remains with the parents as prior to all others. It follows that those entrusted to take care of the child must ensure that they perform such duties transparently, and without undermining the desired instruction of parents. This principle of course is not without exception. Because the state has a legitimate interest in enforcing this responsibility of parents,[20] state intervention in education may be justified in some circumstances,[21] such as where there is child abuse, neglect, or where the child would otherwise not receive a minimum standard of education.[22]

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[15] Ibid.

[16] Ibid. This sentiment was similarly expressed by the Supreme Court of Canada in *B(R) v Children's Aid Society:* The common law has long recognised that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being… because parents are more likely to appreciate the best interests of their children, and the state is ill-equipped to make such decisions itself: *B(R) v Children's Aid Society of Metropolitan Toronto* [1995] 1 SCR 315, 317-318; Similarly, L'Heureux-Dubé J in *Winnipeg Child and Family Services v KWL* [2000] 2 SCR 519, [72] observed: 'The mutual bond of love and support between parents and their children is a crucial one and deserves great respect. Unnecessary disruptions of this bond by the state have the potential to cause significant trauma to both the parent and the child. Parents must be accorded a relatively large measure of freedom from state interference to raise their children as they see fit.'

[17] Blackstone, above n 8, 441.

[18] Ibid.

[19] William Wagner, Nicole Wagner, and Jeremy Marks, 'Revisiting Divine, Natural, and Common Law Foundations Underlying Parental Liberty to Direct and Control the Upbringing of Children' (2014) 5 *The Western Australian Jurist* 1, 20; Samuel Pufendorf, 'On the Duty of Man and Citizen According to the Natural Law' (Cambridge University Press, 1991) 127.

[20] Galston, above n 14, 98.

[21] In the words of John Stuart Mill: '[It is] a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen… it is one of the most sacred duties of the parents… to give to [their child] an education fitting him to perform his part well in life towards others and towards himself…. and if the parent does not fulfil this obligation, the State ought to see it fulfilled': John Stuart Mill, *On Liberty* (Longman, Roberts and Green Co, 4th ed, 1869) 160. According to contemporary liberal theorist William Galston, the line at which the State may justifiably intervene to enforce parental authority, or assume the role, is where there are basic goods to defend, especially those needed for the normal physical, mental, and emotional development of the child: Galston, above n 14, 100.

[22] Ibid. In relation to the scope of parental rights, Locke held that the rights of parents do not 'extend to life and death… over their children', as such physical abuse of children would undermine the purpose of parental

Nonetheless, although the doctrine of parental delegation has enjoyed a long history of jurisprudential and common law recognition,[23] it was not until the twentieth century that the need for the parental right was fully realised.

B *Parental Rights in International Law*

During the twentieth century, collectivist educators became infatuated with the idea of remaking society through the schools.[24] They knew that infiltrating the schools was the best way to bring about social change by breaking down local patriotisms and family ties, and replacing them with a single allegiance to the State.[25] Thus in Nazi Germany, schools began indoctrinating children in collectivist thinking, and breaking down family allegiances through excessive claims on children and interventions into family life.[26] According to French psychologist, Alfred Brauner, German children under Nazism 'denounced, if required, their father who remained loyal to his old political party, and their mother, who preferred to believe the priest rather than the Fuhrer'.[27] Indeed, the indoctrination was so potent that when teenager Walter Hess heard his father call Hitler a 'blood-crazed maniac', he immediately reported him to the authorities, such that his father was then arrested and sent to Dachau.[28] Meanwhile, Walter was promoted to a higher rank in the Hitler Youth for his service.[29]

As to the collectivist education prevalent in Soviet Russia, in 1918, one Soviet schooling theorist declared:

> We must make the young into a generation of Communists. Children, like soft wax, are very malleable and they should be moulded into good Communists... We must rescue children from the harmful influence of the family... We must nationalize them. From the earliest days of their

authority: John Locke, *The second treatise on civil government* (Prometheus Books, 6th ed, 1986) [170]. Pufendorf similarly recognised that in cases of neglect, parents forfeited their rights over their children: 'If some parents… not only violating the law of nature but also overcoming common affection, are unwilling to nurture their offspring, and cast it forth, they cannot longer claim any right over it, nor can they demand from it longer any office due, as it were, to a parent': Wagner, Wagner and Marks, above n 19, 21; These principles have further been affirmed at common law: above n 10.

[23] Blackstone, above n 8, 441.

[24] Gairdner, above n 5, 209.

[25] Ibid 210.

[26] Tara Zahra, '"Children Betray their Mother and Father": Collective Education, Nationalism, and Democracy in the Bohemian Lands, 1900-1948' in Dirk Schumann (ed), *Raising Citizens in the "Century of the Child": The United States and German Central Europe in Comparative Perspective* (Berghahn Books, 2010) 199.

[27] Alfred Brauner, *Ces enfants ont vécu la guerre* (Editions sociales françaises, 1946) 179.

[28] Alfons Heck, *The Burden of Hitler's Legacy* (Renaissance House Publishers, 1988) 83.

[29] Ibid.

> little lives, they must find themselves under the beneficent influence of Communist schools... To oblige the mother to give her child to the Soviet state – that is our task.[30]

Instances such as these and many others testify to the danger of parents surrendering control over the education of their children; a threat explicitly recognised in the drafting of the international human rights documents.

Following the seizure of education, indoctrination of children, and establishment of the Hitler Youth service in Nazi Germany during World War II, in 1947 the United Nations Drafting Committee formulated article 26(3) of the UDHR. The article reads, 'Parents have a prior right to choose the kind of education that shall be given to their children.'[31] While the article may appear concise, one look at the debates that preceded its articulation reveals a depth of meaning and purpose behind its inclusion as a fundamental human right.[32] The reasons may be summarised: article 26(3) is essential to restrain state power as a profound threat to human freedom,[33] and so responsibility for education must be placed in the hands of parents as the 'natural persons' who can best defend the rights of children; rights that are 'sacred' as children cannot defend them themselves.[34] In reaching this conclusion, the Committee thus vested power in parents for the task of education, and so affirmed a long chain of common law and jurisprudential support for parental responsibility over children.

In subsequent decades, calls were made to clarify the rights expressed under the UDHR, and so later international documents elaborated further on the prior parental right. Article 18(4) of the ICCPR provides that State Parties must 'have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.[35] Similarly, article 5 of the *Declaration on the*

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[30] Orlando Figes, *The Whisperers: Private Life in Stalin's Russia*, (Metropolitan Books, 2007) 20.
[31] *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948) art 26(3).
[32] Morsink, above n 4, 258-268.
[33] Ibid 265.
[34] Ibid 265-269. The idea that parents are in the best position to raise their children is further supported under *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 18(2), which states: 'State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern'; Adhar and Leigh, above n 10, 205-206.
[35] *International Covenant on Civil and Political Rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(4); Articles 2 and 9 of the *European Convention on Human Rights* expresses the right is very similar words, and to the same effect.

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief declares:

> Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents… and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.[36]

Parents are thus afforded a large degree of freedom from state interference, particularly for the care and education of children.[37] It follows that parents are free to teach their children in accordance with their own beliefs and convictions, without being subject to arbitrary interference from others, especially public authorities. However, this is not to suggest that parents are alone responsible for the task of education. Article 18(2) of the *Convention on the Rights of the Child* provides that 'States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children'.[38] In this way, a *negative obligation* is imposed on the State to refrain from unnecessary interference with the decisions of parents, alongside a *positive obligation* to assist parents in raising their children and affirming their educational decisions.[39]

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[36] UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, art 5(2).

[37] In the United States, the courts have in recent decades failed to articulate a clear principle on what constitutes too much state intervention in education, as well as how much weight should be afforded to parental concerns. This has come at the great expense of parental rights. In *Fields v Palmdale School District* [2005] USCA9 640, a public school distributed a survey to primary school students, as young as age six, where parents were notified of the general nature, but not substance, of the questions to be asked of the children. The survey included questions such as 'having sex feelings in my body', 'touching my private parts too much' and 'thinking about touching other people's private parts'. Remarkably, in a decision that has attracted wide and vehement criticism, the court upheld the decision of the school board, finding that parents have no constitutional right to 'prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so'; Charles J Russo, 'Same-Sex Marriage and Public School Curricula: Preserving Parental Rights to Direct the Education of their Children' (2007) 32(3) *University of Dayton Law Review* 361, 374; Elliott M Davis, 'Unjustly Usurping the Parental Right: Fields v Palmdale School District, 27 F 3d 1197 (9th Cir, 2005) (2006) 29 *Harvard Journal of Law & Public Policy* 1133, 1135.

[38] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 18(2).

[39] Patricia Wiater, *Intercultural Dialogue in the Framework of European Human Rights Protection* (Council of Europe, 2010) 62. In *Seven Individuals v Sweden, Application No 8811/79* (1982) 29 DR 104, 113, the European Commission of Human Rights ('ECHR') stated that 'the upbringing of children remains essentially a parental duty encapsulated within the concept of family life.' In this way, the ECHR illustrated that respect for parental rights also constitutes respect for the family.

Given that Australia is signatory to these international instruments, Australia is therefore subject to these obligations. Note however that, because Australia is a dualist country, such rights are not directly enforceable in Australian courts without their incorporation into domestic law, and because Australia has not yet taken steps to domesticate parental rights, the enforceability of such rights remains limited. A moral obligation does however exist. As noted by Brennan J in *Dietrich v The Queen*, treaties which have not been incorporated into domestic law may still be 'a legitimate influence on the development of our municipal law. Indeed, it is incongruous that Australia should adhere to the [ICCPR]… unless Australian courts recognise the entitlement and Australian governments provide the resources to carry that entitlement into effect'.[40] In light of this assertion, as well as the High Court majority opinion in *Minister of State v Teoh*, Australia is subject to a 'legitimate expectation' to adhere to its international legal obligations, including the need to respect parental rights.[41] Nevertheless, despite recognition of such rights across a number of international instruments, more recently jurisdictions all over the world have challenged the prior right of parents to educate their children,[42] as demonstrated under the Australian Safe Schools program.

III SAFE SCHOOLS PROGRAM AND PARENTAL RIGHTS

[40] *Dietrich v The Queen* (1992) 177 CLR 292; Ben Clarke and Jackson Maogoto, *International Law* (Thomson Reuters, 2nd ed, 2009) 70-75. In *Polites v Commonwealth* (1945) 70 CLR 60, the High Court held that legislation is not presumed to be conflicting with international law, and in the event of ambiguity, is to be read in conformity with the international law: ibid 68-69.

[41] In *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, the High Court majority noted that Australia was subject to a 'legitimate expectation' to adhere to the Convention on the Rights of the Child; specifically, that the 'best interests of the child' would be treated by administrative decision-makers as a 'primary consideration'.

[42] In more recent decades, the rights of parents to educate their children have become subject to serious challenge. Australia is signatory to a number of international instruments that protect parental rights, including the ICCPR, ICESCR and UNCRC, and yet parents in Australia have a very limited capacity to direct their children's schooling. While all of the state education acts recognise the responsibility of parents in education, and most allow for withdrawal of children from school classes on conscientious grounds, in practice the parental role is restricted to the choice of which school their child will attend. This limited role was recognised by the High Court in *Attorney-General (Vic); Ex Rel Black v Commonwealth ('DOGS case')* (1981) 146 CLR 559, 643*;* a decision that upheld the constitutionality of the *Schools Commission Act 1973* (Cth) (now defunct)*,* which expressed the prior right of parents as merely the right 'to choose whether children are educated at a government school or a non-government school.' Contrasted with the comprehensive protection of parental rights at common law and international law, parental rights in Australia can therefore barely be considered rights. In the words of education expert Joy Cumming, '[Australian] legislation, particularly in education, focuses more on the responsibilities of parents to meet government-imposed requirements, than rights': J Joy Cumming, Ralph Mawdsley, and Elda De Waal, 'The "Best Interests of the Child", Parents' Rights and Educational Decision-making for Children: A Comparative Analysis of Interpretation in the United States of America, South Africa and Australia' (2006) 11 *Australia & New Zealand Journal of Law and Education* 43, 53; As such, with the State enjoying extensive control over both public and private schooling in Australia, the effectiveness of the parental right 'to choose whether children are educated at a government school or a non-government school' must be called into question.

Emerging from Victoria in 2010, the Safe Schools Coalition Australia ('SSCA') is a national network of organisations which seek to 'create safer and more inclusive environments for same sex attracted, intersex and gender diverse students, staff and families.'[43] The Coalition places a particular emphasis on establishing safe and inclusive schools in Australia, with an overarching goal to promote tolerance and acceptance of LGBTIQ persons.[44] In light of research that suggests LGBTIQ persons suffer from high levels of depression, suicide and other negative social consequences,[45] bullying is a real issue that the Safe Schools program seeks to address. In response, the SSCA has produced a range of materials for schools to include in their curricula, including four official guides, three posters, and eight lesson plans contained in the resource *All of Us;* a teaching manual designed to be taught in school classrooms.[46] Because each state government in Australia is responsible for its own education policies, it is important to note that the Safe Schools program varies in practice and implementation from state to state.[47]

Following its nationwide implementation across many Australian schools in 2013, the Safe Schools program has been the subject of much controversy. Concerns have been raised in relation to the program's teachings on topics such as gender and sexual diversity, its sexual content, as well as the lack of parental engagement under the program.[48] Following an independent review of the SSCA program in March 2016,[49] Education Minister Simon Birmingham outlined the Federal Government's proposed changes to the program.[50] These changes included altering certain materials, limiting program access to secondary schools,

[43] Safe Schools Coalition Australia, *Who We Are* (2017) Safe Schools Coalition Australia <http://www.safeschoolscoalition.org.au/who-we-are>.
[44] Ibid.
[45] G Rosenstreich, *LGBTI People Mental Health and Suicide, Revised 2nd Edition* (2013) BeyondBlue <https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0258-lgbti-mental-health-and-suicide-2013-2nd-edition.pdf?sfvrsn=2>.
[46] Christopher Bush et al, *All of Us* (2016) Safe Schools Coalition Australia <http://www.education.vic.gov.au/Documents/about/programs/health/AllOfUs_UnitGuide.pdf>.
[47] In December 2016, Safe Schools Coalition Australia severed its ties with the Safe Schools Coalition Victoria, with the Education Department taking over the management in Victoria; State Government of Victoria, *Safe Schools* (30 April 2017) Victoria Department of Education and Training <http://www.education.vic.gov.au/about/programs/health/Pages/safe-schools-coalition.aspx?Redirect=1>.
[48] David van Gend, *Stealing from a child: the injustice of 'marriage equality'* (Connor Court Publishing, 2016) 89-107.
[49] William Louden, *Review of Appropriateness and Efficacy of the Safe Schools Coalition Australia Program Resources* (11 March 2015) Australian Department of Education and Training <https://docs.education.gov.au/system/files/doc/other/review_of_appropriateness_and_efficacy_of_the_ssca_program_resources_0.pdf>.
[50] Simon Birmingham, *Statement of Safe Schools Coalition* (18 March 2016) Senator Birmingham <http://www.senatorbirmingham.com.au/Latest-News/ID/2997/Statement-on-Safe-Schools-Coalition>.

and requiring parental consent prior to students being taught SSCA content.[51] In September 2016, students in New South Wales, Tasmania, South Australia, Queensland and Western Australia were instructed not to participate in any lessons involving SSCA materials without the consent of their parents, although the extent to which this has been followed remains unclear.[52] Following the Federal Government's announcement to cease Safe Schools Coalition funding beyond 2017,[53] the state governments of New South Wales, Tasmania and South Australia have discontinued the program,[54] whereas the Victorian Government has strongly vowed to continue the program as funded by the state budget.[55] Nevertheless, amidst calls for a new anti-bullying program to replace the Safe Schools program in the states where it has been repealed,[56] it is worthwhile examining the program's experience across a number of Australian states, and its compliance with parental rights protected under the common law and international law.[57]

IV DISRESPECTING PARENTAL INSTRUCTION

The first way in which the Safe Schools program raises issues for parental rights in education is by teaching material inconsistent with the desired instruction of parents. In *Kjeldsen v Denmark,* three couples sought to exclude their children from compulsory sex education in the primary schools of Denmark on the basis that it offended their religious beliefs.[58] The parents' claims were dismissed; however, the European Court of Human Rights ('ECHR') declared:

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[51] Ibid.

[52] Stefanie Balogh, 'MP demands schools offer get-out option on gender bully scheme', *The Australian* (online), 15 September 2016, <http://www.theaustralian.com.au/national-affairs/education/mp-demands-schools-offer-getout-option-on-gender-bully-scheme/news-story/15d65f8a5becb6b004aacc00230215c6>.

[53] Gay Alcorn, 'What is Safe Schools, what is changing and what are states doing?', *The Guardian* (online), 14 December 2016 <https://www.theguardian.com/australia-news/2016/dec/14/what-is-safe-schools-what-is-changing-and-what-are-states-doing>.

[54] Georgie Burgess, 'Safe Schools ditching not due to pressure from Eric Abetz, Tasmanian Education Minister says', *ABC News* (online), 19 April 2017 <http://www.abc.net.au/news/2017-04-19/greens-slam-new-safe-schools-program-as-caving-in-to-right/8454646>.

[55] 'Victorian Premier guarantees future of Safe Schools program as Federal MPs call for scheme to be axed' *ABC News* (online), 16 March 2016 <http://www.abc.net.au/news/2016-03-16/victorian-premier-guarantees-safe-schools-if-federal-funding-cut/7252272>.

[56] Nour Haydar, 'Safe Schools program ditched in NSW, to be replaced by wider anti-bullying plan', *ABC News* (online), 16 April 2017 <http://www.abc.net.au/news/2017-04-16/safe-schools-program-ditched-in-nsw/8446680>.

[57] Although Australia is signatory to many of the international instruments that protect parental rights, Australia is a dualist country, and as such, parental rights under international law are therefore not directly enforceable in Australian courts: *Trendex Trading Corp v Bank of Nigeria* [1977] 1QB 529. However, Australia is nonetheless under a moral obligation to respect its international legal obligations. In *Polites v Commonwealth* (1945) 70 CLR 60, the High Court held that legislation is not presumed to be conflicting with international law, and in the event of ambiguity, is to be read in conformity with the international law.

[58] *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711.

> The State… must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded.[59]

Although the Courts' restrictive interpretation of parental rights as merely a prohibition on 'indoctrination' has been regarded as overly delimitative in more recent cases, the requirement of the curriculum being conveyed in an 'objective, critical and pluralistic' manner has since become the standard for assessing whether parental rights under international law have been violated.[60] The Safe Schools program falls well below this standard; firstly, in teaching material inconsistent with parents' beliefs and desired instruction; and secondly, in presenting material of an overly sexual nature.

A *Undermining the beliefs and instruction of parents*

The first way in which the program challenges parental rights is by undermining the beliefs and instruction that many parents wish to provide for their children. Under the program, students are taught a number of lessons on gender and sexuality, whereby lessons usually start with a testimonial video, followed by an activity or discussion on the topic that has been introduced. Generally, the aim of such lessons is to develop a greater understanding of the challenges faced by many LGBTIQ persons, and for the most part, they are appropriate for purpose. However, the program does overstep its boundaries in a number of ways, particularly in teaching controversial materials that conflict with the beliefs of many parents. Materials taught to students includes the idea that gender is a social construct that is best understood as what a person feels inside,[61] gender is not limited to male and female, and that a person's gender misalignment with their biological sex is normative.[62] One testimonial

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[59] Ibid [53].

[60] In *R (Fox) v Secretary of State for Education* [2015] EWHC 3404 [31], for example, Warby J stated in relation to the standard for parental rights: 'The conclusion to be drawn is that the requirements of A2P1 will be infringed by the state if it fails in its duty to take care that the educational provision it makes is conveyed in an objective, critical and (importantly for the present case) pluralistic manner, even if it does not go so far as – in the ordinary sense of the phrase – to "pursue the aim of indoctrination". That conclusion is required, it seems to me, both by the way in which the Court's conclusion is expressed and in order to give real meaning to the duty of care delineated by the court in these cases.'

[61] Minus18, *OMG I'm Trans* (2015) Victoria Department of Education and Training, 6 <http://www.education.vic.gov.au/Documents/about/programs/health/OMG%20I%27m%20Trans.pdf>.

[62] For example, lesson 4 of the SSCA teaching resource 'All of Us' states: 'Up until this point, many students may believe that gender can only be either male or female, and that they have specifically related behaviours and characteristics. By completing this exercise, students will be able to explore the concept that gender exists outside this binary and that societal expectations of gender are shaped by the world in which they live': Christopher Bush et al, above n 46.

video features Nevo, a young person who identifies as male, telling students about 'growing up with the knowledge that the female sex assigned to him at birth did not match who he knew he was'.[63] Similarly, Margot explains to students 'what it's like to grow up being told you're a girl when you know you're a boy.'[64] The program does not discuss the evidence that points to gender being biologically determined, nor entertains the idea that feelings and identity cannot change these objective facts. As noted by David van Gend, at no point in the program is the idea entertained that this gender dysphoria may instead be a problem with the person's mind, and not their body.[65] Accordingly, students are taught such theories uncritically, with the effect being that students may more readily accept these ideas as fact. This has caused heavy backlash from many parents and groups, especially on the topic of gender fluidity, with the result being that 'gender theory' is now banned in NSW classrooms.[66] Furthermore, many theories promoted under the program are based on extremely contentious studies in psychology and social science, with the research underlying the program also being subject to strong criticism recently.[67] In this way, not only does the Safe Schools program teach material inconsistent with the beliefs and instruction of many parents, it further promotes ideas that are strongly contested in the scientific community. It is thus difficult to see how the program would satisfy the *Kjeldsen* requirement of 'objectivity'.

The second problem arising under the program's content is its failure to be conveyed in a 'pluralistic' manner. Australian children and young people grow up in a rich variety of religious and cultural milieu, with a large proportion of the population holding traditional beliefs very different to that of the creators of the Safe Schools program.[68] Despite this diversity, however, the program teaches a very limited view of sexuality and relationships, leaving parents who hold more traditional views largely out of consideration. In teaching students on matters such as transgenderism and sexual diversity, very little room for alternative viewpoints is granted, particularly those held by persons with more traditional beliefs. In New South Wales, over 17,000 signatures from the Australian-Chinese community were gathered in a petition for the state government to discontinue the program, on the basis

[63] Minus18, *Nevo's Story – All of Us* (22 November 2015) Minus18 <https://www.youtube.com/watch?v=e5tTKCqIwEk>.
[64] Christopher Bush et al, above n 46, 7.
[65] Gend, above n 48, 104.
[66] Rebecca Urban, 'Gender theory banned in NSW classrooms' *The Australian* (online), 9 February 2017 <http://www.theaustralian.com.au/national-affairs/education/gender-theory-banned-in-nsw-classrooms/news-story/eeb40f3264394798ebe67260fa2f5782>.
[67] Patrick Parkinson, 'The Controversy over the Safe Schools Program - Finding the Sensible Centre' (Sydney Law School Research Paper No.16/83, 14 September 2016).
[68] Ibid 29.

that it 'promotes a particular ideology, including gender fluidity, that is contrary to our cultural and belief system'.[69] The petition also notes that the program 'discriminates against children and parents from other cultures who have a view of sexual relationships involving male and female as normative'.[70] This is just one of a number of petitions brought against the program, due to its failure to represent traditional beliefs in the community.[71] Consequently, by failing to represent a greater diversity of views on a range of topics, the Safe Schools program disregards the beliefs and convictions of many parents, thereby falling short of the *Kjeldsen* requirement of 'pluralism'.

B *Exposure to Sexually Explicit Content*

Questions have been raised as to whether the material accessible under the Safe Schools program is appropriate for school age children, due to its sexual content. Although the ECtHR in *Kjeldsen* found that the Danish sex education program did not breach the rights of parents in that particular case, the Court did note that a different result may have followed had the program been involved in 'exalting sex or inciting pupils to indulge precociously in practices that are dangerous for their stability, health or future or that many parents consider reprehensible'.[72] In light of this assertion, page 10 of the SSCA booklet 'OMG I'm Queer' provides students with the following advice by contributor Alice Chesworth:

> It may come as a surprise, but there is no strict definition for virginity, especially if you're queer. Penis-in-vagina sex is not the only sex, and certainly not the ultimate sex. If you ask me, virginity is whatever you think it is. I've had friends who count their first time giving oral as their virginity… I'm bisexual, so I ended up thinking of myself as having two virginities, my

[69] Danuta Kozaki, 'Safe Schools: Australian Chinese community petition against anti-bullying program lodged in NSW', *ABC News* (online), 24 August 2016 <http://www.abc.net.au/news/2016-08-23/safe-schools-mp-lodges-petition-against-program-signed-by-17000/7777030>; Parliament of New South Wales, *10,000+ signature petition on Safe Schools Coalition program* (23 August 2016) Parliament of New South Wales <https://www.parliament.nsw.gov.au/la/petitions/Pages/tabled-paper-details.aspx?pk=68765>.

[70] Parliament of New South Wales, above n 69.

[71] The Australian-Lebanese community also brought a petition against the program, arguing similar reasons for the cessation of the Safe Schools program in New South Wales: Parliament of New South Wales, *10,000+ signature petition on Safe Schools Coalition program* (5 April 2017) Parliament of New South Wales <https://www.parliament.nsw.gov.au/la/petitions/Pages/tabled-paper-details.aspx?pk=68765>; Another petition was also gathered in Queensland, with over 11,000 signatures calling for the list of schools signed up to the program to be released: Emma Partridge, 'Australian Christian Lobby slams Safe Schools anti-bullying program', *The Sydney Morning Herald* (online), 4 November 2015 <http://www.smh.com.au/nsw/australian-christian-lobby-slams-safe-schools-antibullying-program-20151103-gkq6gr.html>.

[72] *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711, [54].

> first time with a chick and my first time with a dude. How you think about it is really up to you![73]

Following the complaints of many parents and groups, the authors of the booklet removed this section entitled 'Doing It', and a smaller online version of the booklet appeared in 2015.[74] However, the 2014 version is still available in hard copy at schools, and on certain school websites.[75] Moreover, in February 2016, George Christensen MP gave an account of the sexual nature of the program in Parliament,[76] where it was observed that the SSCA website recommends to students websites that include pornographic web content, sex shops, adult online communities and sex clubs.[77] Therefore, with it infringing objectivity, pluralism and/or the accessibility of sexual content,[78] a strong case can thus be made that the SSCA program contravenes parental rights under article 18(4) of the ICCPR. It therefore stands to reason that parents ought to be able to exempt their children from materials taught under the Safe Schools program, so as to protect them from instruction contrary to their beliefs and convictions.[79]

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[73] Minus18, *OMG I'm Queer* (2014) Golden Grove High School, 10 <https://www.goldengrovehs.sa.edu.au/images/PDFS/OMG%20Im%20Queer.pdf>.
[74] Gend, above n 48, 96.
[75] Minus18, above n 73.
[76] Gend, above n 48, 99.
[77] As observed by Christensen, the SSCA resource 'All of Us' directs students to LGBT organisation Twenty10; an organisation which hosted a hands-on workshop for youth on sex toys and sadomasochistic practices in early 2016. 'All of Us' also directs students to the LGBT youth organisation Minus18, which produced most of the SSCA resources, and whose website provides advice on penis-tucking, chest-binding, sex toys and sex advice, amongst numerous other activities. In turn, many of these websites themselves have links to even more sexual websites, such as the pornographic sex shop 'The Tool Shed' which offers a range of sex toys and pornography, as well as teen sex advice site 'Scarleteen' which promotes activities such as group sex and sadomasochism. Since Christensen's speech, many of the links to these websites have been taken down, but one still cannot ignore their very presence in the first place: Commonwealth, *Parliamentary Debates,* Federation Chamber, 25 February 2016 (George Christensen MP); Gend, above n 48, 99-100.
[78] The Safe Schools program has been accused of sexualising children in other ways. Under the Victorian program's resource 'All of Us', a lesson is prescribed where children in years 7 and 8 are asked to imagine themselves as a person who is 16 years or older, and in a same-sex relationship. Questions are then asked of the children how they would respond to certain situations in that role: Christopher Bush et al, above n 46, 20.
[79] This is not to suggest that measures have not been undertaken to allow for greater parental involvement. Following the independent review of the SSCA program in March 2016, Senator Birmingham announced several changes to the Safe Schools program, including the requirement for 'parental consent for student participation in programme lessons or activities'. The changes also required 'agreement of relevant parent bodies for schools to participate in the SSCA programme, including the extent of participation and any associated changes to school policies'. Notably, these changes were consistent with the findings of the NSW Committee on the Sexualisation of Children and Young People, which identified several problems with the SSCA program in terms of its sexualised content and age appropriateness. Due to these perceived problems, the Committee recommended that 'the Department of Education require schools under the Controversial Issues in Schools policy to consult with parents prior to any implementation of the Safe Schools program, and require that parents choose whether to opt in to this program. At any time, parents may elect to have their child opt out of the program': Committee on Children and Young People, Parliament of New South Wales, *Sexualisation of Children and Young People* (2016) 58.

V DISALLOWING PARENTAL EXEMPTIONS

Another important feature of the SSCA program is the extent to which it allows exemptions for parents who seek to protect their children from the program. In *Kjeldsen v Denmark,* the ECHR found that, where compulsory education may be avoided by students exercising a right to opt-out, this factor will serve against the finding of a breach of parental rights.[80] By the same token, other cases have found that where a right to opt-out is not available or restricted by schools, the court will be more likely to find a breach.[81] In *Folgero v Norway,* for example, several parents successfully brought an action against a compulsory religious education program in Norwegian schools, due to the program not being delivered in a 'neutral and objective' way.[82] Although the program was regarded by the majority to have fallen short of indoctrination, its failure to offer sufficient exemptions for students was a strong contributory factor in finding a contravention of parental rights.[83] For these reasons, the Court held that the Norwegian religious education program failed the *Kjeldsen* test to be 'objective, critical and pluralistic', and so violated article 18(4) of the ICCPR.[84] More recent decisions have shed further light on the necessity for exemptions in compulsory education. In *Fox v Secretary of State*, it was declared:

> [A]n opt-out is not an adequate substitute for the provision of an educational programme which accords the parents their right to respect for their convictions. The need to withdraw a child would be a manifestation of the lack of pluralism in question.[85]

In this way, the Court found that a State's obligation to respect parental rights in education is not absolved merely by allowing parents to withdraw their children from the school classes. Rather, the need for parents to withdraw their children may instead indicate a failure of the

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[80] James Dingemans et al, *The Protections for Religious Rights: Law and Practice* (Oxford University Press, 2013) 437. In *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711 [54], the Court observed that Denmark's education system 'preserves an important expedient for parents who, in the name of their creed or opinions, wish to dissociate their children from integrated sex education; it allows parents either to entrust their children to private schools, which are bound by less strict obligations and moreover heavily subsidised by the State.'

[81] James Dingemans et al, above n 80, 435.

[82] *Folgero and Ors v Norway* (2008) 46 EHRR 44. Another case that is often cited alongside *Folgero* is that of *Zengin v Turkey* (2008) 46 EHRR 44, whereby the requirements of 'objectivity' and 'pluralism' are discussed in even greater detail.

[83] *Folgero and Ors v Norway* (2008) 46 EHRR 44, [100]. In reaching this conclusion, the Court held 'the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests': ibid; Heiner Bielefeldt, Nazila Ghanea, Michael Wiener, 'Freedom of Religion or Belief: An International Law Commentary' (Oxford University Press, 2016) 213.

[84] James Dingemans et al, above n 80, 435.

[85] *R (Fox) v Secretary of State for Education* [2015] EWHC 3404 [79].

program to be sufficiently pluralistic in its conveyance, and thus require amendment. In light of these decisions, therefore, the Safe Schools program's facilitation of exemptions must be examined, so as to determine whether it affords sufficient respect for parental rights in education.[86]

In most state education acts in Australia, provision is made for parents to withdraw their children from classes on conscientious or religious grounds.[87] The reason behind this is that school instruction often conflicts with the desired instruction of parents, and thus facility must be made for parents to exempt their children from those teachings. Nevertheless, such an option seemingly does not extend to parents under the Safe Schools program. When one mother sought to exempt her son from the program due to her conflicting beliefs, the school and an SSCA coordinator told her that an exemption was simply not possible, such that the mother was forced to send her child to a private school.[88] The reason for the school's refusal was due to the program's wide implementation.[89] Under the program, schools are encouraged to implement SSCA materials across the whole school curriculum and in all subject areas. As point 5 of the SSCA resource 'Guide to Kick Starting Your Safe School' reads:

> Actively plan to include same sex attracted, intersex and gender diverse people, histories and events in your teaching area. Whatever the subject and your experience, there are always new ways you can better integrate diversity through case studies, texts, and other examples.

[86] This is not to suggest that parents must establish the *Kjedlsen* test of 'objective, critical and pluralistic' to qualify for a class exemption for their child. Rather, exemptions vary depending on the relevant state's education policy. In New South Wales, exemptions may be granted where a parent's 'objection is conscientiously held on religious grounds': *Education Act 1990* (NSW) s 26. This requirement reflects the standard applied in other jurisdictions. In the South African case of *MEC for Education: Kwazulu-Natal and Others v Pillay* [2007] ZACC 21, the relevant test for accommodation was whether the religious belief is sincerely held, and whether it could be reasonably accommodated. The Court held that, 'if a sincere religious belief is established, it seems correct that a court will not investigate the belief further … A religious belief is personal, and need not be rational, nor need it be shared by others. A court must simply be persuaded that it is a profound and sincerely held belief.' Although this case related to the accommodation of a child's religious convictions, and secondarily those held by the parents, the principle ought to apply consistently.

[87] *Education Act 1990* (NSW) s 77; *Education (General Provisions) Act 2006* (Qld) s 245; *School Education Act 1999* (WA) s 72; *Education Act 1972* (SA) s 102; Under the *Education and Training Reform Act 2006* (Vic), provision is not made for exemptions due to conscientious objection, but they may be sought from Special Religious Education. Nevertheless, an argument can be made that, even where religious exemptions are not granted under state legislation, anti-discrimination law in Australia would allow for parents to withdraw their children from certain classes on conscientious grounds.

[88] The Australian Family Association, Submission No 30 to the New South Wales Government, *Inquiry into the Sexualisation of Children and Young People,* 8 April 2016, 35-36.

[89] Ibid.

> Challenge gender stereotypes and heteronormativity in discussions inside or outside the classroom.[90]

Consequently, because SSCA materials may be applied across the whole curriculum, they may not be confined to specific classes from which parents can withdraw their children. Opt-out provisions under state legislation are thus effectively circumvented, leaving dissenting parents with the decision to either change schools or allow their children to be taught the material under the program. As a result, the presumption of control over children's education is thereby reversed in favour of schools, such that they then have a much greater liberty to teach students the program, regardless of the moral and philosophical convictions of parents. In considering the similarities that the Safe Schools program shares with *Folgero*, the program would arguably breach parental rights under Article 18(4) of the ICCPR, due to its failure to allow for a sufficient opt-out mechanism for parents who object to the program's content. Moreover, even if the program was to offer a greater facility for student exemptions, the State's positive obligation to respect parental convictions would still require further amendments to the program's material, in order to place the program in compliance with the *Kjeldsen* requirement to be conveyed in an 'objective, critical and pluralistic' manner.[91]

VI INTERFERING WITH THE FAMILY UNIT

The third way in which the Safe Schools program challenges the prior right of parents is by interfering with the family unit. Article 10 of the *International Covenant on Economic, Social and Cultural Rights* provides that 'the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.'[92] State Parties thus have an obligation to support family unity and stability, and are prohibited from engaging in any activity that might constitute 'unlawful and arbitrary interference' with the family.[93]

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[90] Roz Ward, Joel Radcliffe and Micah Scott, *Guide to kick starting your safe school* (2013) Safe Schools Coalition Australia <http://www.education.vic.gov.au/Documents/about/programs/health/GuideKickstartingSafeSchools.pdf>.

[91] *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711 [53].

[92] *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 10.

[93] Article 17(1) of the ICCPR prohibits unlawful and arbitrary interference with the family unit. The Human Rights Committee has regarded the term 'unlawful' to mean that state interferences must have basis in law, and the term 'arbitrary' to mean that the interference must be 'reasonable in all the particular circumstances': Geraldine Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff Publishers, 1998) 79.

This prohibition does not merely involve a negative undertaking. Rather, in *X and Y v The Netherlands,* the European Court of Human Rights found that 'there may be positive obligations inherent in an effective respect for private or family life… even in the sphere of the relations of individuals between themselves'.[94] Only the 'most pressing grounds can be sufficient in a democratic society to justify the disruption of existing family ties', whether such interference emanates from state authorities or from natural or legal persons.[95] Nevertheless, despite the prohibition of family interference recognised under the common law and international law, the Safe Schools program interferes with the family unit by encouraging children to hide information from their parents, and advising schools to exclude parents from decisions affecting their children.

A *Encouraging Children to Hide Information from Parents*

As mentioned earlier, the SSCA resource 'All of Us' contains a number of lesson plans that usually start with a testimonial video from a young person, speaking about their experience being same-sex attracted, intersex or transgender. A common feature throughout these testimonies is that individuals often stress the importance of their family as a support network that helps them through the challenges they face growing up.[96] To this extent, the family is affirmed under the program. However, the program does in a number of ways undermine the family unit, such as by encouraging children to access restricted materials without parental consent. In 2014, the Safe Schools Coalition released several resources for schools and students, including the booklet 'Standout'.[97] On page 18 of the booklet, students are advised to seek access to websites at school that may be blocked at home. The booklet reads:

> Some students don't have access to the internet at home, or it is monitored by their family so having access at school is really important. Try accessing the website minus18.org.au, safeschoolscoalition.org.au or some of the groups listed at the back of this guide. Are any of them blocked? If so, for what reason? Speak to a teacher about the importance of allowing students to access them at school, and let them know why this matters.[98]

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[94] Ibid*; X and Y v the Netherlands, Application No. 8978/80* (1985) 8 EHRR 235 [23].
[95] *Application No. 8059/77* (1977) DR 15, 208; Van Bueren, above n 93, 79; 'ECHR' refers to the European Commission of Human Rights.
[96] See for example: Minus18, *Margot's Story – All of Us, Minus18* (online), 22 November 2015 <https://www.youtube.com/watch?v=CduZq6OHXH4>.
[97] Safe Schools Coalition Australia, *Resources* (2014) Safe Schools Coalition Australia <http://www.safeschoolscoalition.org.au/resources>.
[98] Roz Ward and Micah Scott, *Stand Out* (2014) Victoria Department of Education and Training <http://www.education.vic.gov.au/Documents/about/programs/health/StandOut.pdf>.

There are many reasons for parents having internet safeguards at home. Not only would such safeguards be in place to protect children from material that is inappropriate and harmful, it would also serve to restrict content that is contrary to the instruction of parents. The SSCA overrides this instruction, however, in advising children to seek access to certain Safe Schools materials at school, without parental knowledge.[99] In this way, children are encouraged to become activists for the Safe Schools cause, by asking teachers to unblock SSCA websites at school that may be against the wishes of their parents. The result of all this is that a disconnect is drawn between parents and children, interfering with family unity and stability, and undermining one of the most important ties between parent and child. Such practice would arguably constitute an arbitrary interference with the family, as prohibited under article 10 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').[100]

B *Schools Excluding Parents*

Another way in which the Safe Schools program fails to respect the family is through encouraging schools to exclude parents from decisions affecting their children. In the SSCA resource, 'Guide to Supporting a Student to Affirm or Transition Gender Identity at School', schools are advised on how to develop a plan to manage a student's gender transition.[101] In the document, no reference is made to the need for advice from a doctor, psychologist, or relevant expert, and there is no requirement to involve parents.[102] Instead, the resource suggests that there are circumstances in which the student's parents ought to be *excluded* from involvement in the gender transitioning process, subject to a determination made by the school. The document provides:

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[99] The Australian Family Association, Submission No 30A to the New South Wales Government, *Inquiry into the Sexualisation of Children and Young People,* 8 April 2016, 3.

[100] SSCA resources also direct children to websites such as Minus18; a site that encourages children to subvert parental safeguards when using the internet. In one Minus18 article, 'Cover your Tracks', students are provided with 'handy tips on keeping stealthy when browsing online', and instructed on how to delete their web-browsing history.[100] The consequences of this advice is evident. If parents are blocked from knowing what their children are accessing online, they are hindered in their ability to protect their children from accessing harmful materials and content contrary to their desired instruction. As a result, rather than assisting parents to fulfil their responsibilities, SSCA instead treats parents as people from whom things should be hidden, thereby alienating parents from their children: Evidence to Committee on Children and Young People, Parliament of New South Wales, Sydney, 7 April 2016, 21-24 (Theresa Mary Kelleher).

[101] Roz Ward, Joel Radcliffe and Micah Scott, *Guide to Supporting a Student to Affirm or Transition Gender Identity at School* (22 October 2015) Victoria Department of Education and Training <http://www.education.vic.gov.au/Documents/about/programs/health/GuideSupportingStudentAffirmTransition.pdf>.

[102] Parkinson, above n 67, 22.

> Consideration should be given to the age and maturity of the student and whether it would be appropriate to involve the students' parent(s) or guardian(s) in each decision. Assess the support given by a student's family members or carers, and think through the needs of any siblings, especially those attending the same school. If a student does not have family or carer support for the process, a decision to proceed should be made based on the school's duty of care for the student's wellbeing and their level of maturity to make decisions about their needs. It may be possible to consider a student a mature minor and able to make decisions without parental consent.[103]

This advice has also been supported in practice. La Trobe University research quotes a case in which teachers facilitated a student to leave school for gender-transitioning advice without parental consent. In the words of the student, 'a number of staff members did all they could to assist me in a period when my parents refused to allow me to transition… My teachers broke multiple rules to allow me to leave school without my parents' permission for medical appointments.'[104]

Such instruction by the SSCA resources does not accord respect for the rights of parents.[105] Not only does it suggest that parents should only be consulted if they are *supportive* of their child's gender transitioning process, it assumes that schools are better than parents at assessing the best interests of children, and so justified in subverting their parental rights.[106] The problem with this contention, however, is that not only is it incongruous with the prior right of parents to direct the upbringing of their children, it also fails to consider the lack of

[103] Roz Ward, Joel Radcliffe and Micah Scott, above n 101, 1.

[104] Dr Elizabeth Smith et al, *Gender affirming schools: Towards safe schools for gender diverse and transgender young people in Australia* (13 November 2015) La Trobe University <http://docplayer.net/12107663-Latrobe-edu-au-cricos-provider-00115m.html>; The Australian Family Association, above n 99, 3.

[105] This is not to suggest that parental rights over children remain unstifled until the child reaches the age of maturity. In *Secretary, Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218, the High Court of Australia held that parental rights diminish as the child becomes increasingly competent and mature. However, the Court also held that where there is a dispute between parents and child for a proposed medical treatment, the *court* will adjudicate the dispute, where a decision for medical treatment will be made in the 'best interests of the child'. Considering that the SSCA resource advises *schools* to make such a determination without parental consent, and also without consideration of whether gender reassignment surgery would fit suitably into the category of 'medical treatment', issues of parental rights undoubtedly arise.

[106] This is not the first time that schools have been encouraged to override the decisions of parents. In South Australia, a compulsory school policy has been introduced in November 2016 which allows students to select whatever uniforms, bathrooms and sleeping quarters they prefer according to their identified 'gender'. Consultation with parents is advised under the policy, however, parental consent is not required. As such, if a student's wishes clash with those of the parents, the school may 'assess the best interests of the child to ensure their physical and psychological safety and wellbeing', and proceed with a decision on that basis: Department for Education and Child Development, *Procedure: Transgender and intersex student support* (24 November 2016) Department for Education and Child Development <https://www.decd.sa.gov.au/sites/g/files/net691/f/transgender-and-intersex-support-procedure.pdf?v=1480468803>.

conclusive evidence in favour of gender re-assignment treatment as a successful means of reducing the psychological issues faced by many transgender-identifying individuals.[107] Coupled with evidence that points to high rates of gender-confused children identifying consistent with their biological sex in adulthood,[108] the potentially irreversible damage that may be caused through gender re-assignment surgery, and the overall inconclusiveness of research in this field of study, surely it is beyond the scope of a school's function and capacity to assess the best interests of the child; that is, to determine whether to support or discourage a student's feelings of gender non-conformation.

Moreover, the Guide suggests that schools may assess the maturity of a minor in making this decision, and yet fails to offer any guidance on how to determine whether a child has sufficient maturity to override parental consent, such as by certification of a developmental psychologist.[109] As observed by Patrick Parkinson, schools must have a duty of care 'to ensure that people wholly unqualified to manage gender dysphoria are not involved in assisting the child or young person to make immensely important decisions that have all kinds of consequences', including alienation from parents.[110] These consequences are clearly not anticipated by the SSCA resource,[111] or have otherwise been ignored in pursuit of affirming students' decisions to transition gender. As a result, parents are excluded from

[107] One of the most comprehensive long-term studies into the effectiveness of gender reassignment surgery was a Swedish study published in 2011, examining 324 sex-reassigned persons up against a randomly-selected control group matched for age and gender. The study examined the long-term effectiveness of sex reassignment surgery with patients from 1973-2003: C Dhejne et al, 'Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden' 6(2) *Public Library of Science: One* 16885. The study concludes: 'Persons with transsexualism, after sex reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric morbidity than the general population. Our findings suggest that sex reassignment, although alleviating gender dysphoria, may not suffice as treatment for transsexualism, and should inspire improved psychiatric and somatic care after sex reassignment for this patient group.'

[108] A De Vries, Cohen-Kettenis. 'Clinical management of Gender dysphoria in Children and Adolescents: the Dutch Approach' (2012) 59(3) *Journal of Homosexuality* 301-316.

[109] Parkinson, above n 67, 22.

[110] Ibid.

[111] Moreover, the Guide also recommends that schools may, without mention of parental consent, change their accounts to record a different gender identity for students: Ward, Radcliffe and Scott, above n 101, 1-3; Under New South Wales law, gender identity may only be legally changed once a person is 18 years of age or older, and only when a set of strict criteria has been met. This criteria includes the person having undergone gender reassignment surgery, as well as the procedure being supported by the statutory declaration of two medical practitioners: *Births, Deaths and Marriages Registration Act* 1995 (NSW) pt 5A; Parkinson, above n 67, 22; In any case, the SSCA Guide ignores the policy behind these laws, and instead promotes the idea that students may choose their name and gender identity to be entered into school records, without mention of parental consent. As a result, parents are excluded from decisions involving their children, encouraging a disconnect between parents and children, and further undermining the family unit as protected under domestic law. Moreover, such instruction to students would also likely be inconsistent with Article 10 of the ICESCR, in failing to afford 'the widest possible protection and assistance to the family… the natural and fundamental group unit of society'.

decisions involving their children; a clear breach of the State's positive obligation to affirm the family unit under article 10 of the ICESCR.

VII FAILING TO PROVIDE EDUCATIONAL TRANSPARENCY

The last way in which the Safe Schools program undermines the rights of parents is through its lack of transparency. Although this requirement has not been explicitly recognised under international human rights instruments, article 18(4) of the ICCPR does impose an obligation on the State to ensure the religious and moral education of children is in conformity with parents' moral and religious convictions.[112] Transparency in education may therefore be implied under article 18(4) on the basis that, unless parents know what their children are being taught at school, an assessment of whether the State is complying with its obligations cannot be undertaken. Moreover, the *Melbourne Declaration on Education Goals for Young Australians* makes the following statement with respect to educational transparency:

> Information about the performance of individuals, schools and systems helps parents and families make informed choices and engage with their children's education and the school community. Parents and families should have access to… contextual information about the philosophy and educational approach of schools, their facilities, programs and extracurricular activities, [and] information about a school's enrolment profile.[113]

Communication with parents on the adoption of school policies and programs is thus an important objective under the policy framework for the Australian curriculum, so as to ensure that parents know what their children are being taught. Under the Safe Schools program, however, educational transparency has been ignored in a number of ways, including a lack of parental engagement in the program and failure of schools to notify parents when the program has been adopted.

A *Lack of Transparency and Parental Engagement*

[112] *International Covenant on Civil and Political Rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(4); Articles 2 and 9 of the *European Convention on Human Rights* expresses the right is very similar words, and to the same effect.

[113] Ministerial Council on Education, Early Childhood Development and Youth Affairs, *Melbourne Declaration on Educational Goals for Young Australians* (December 2008) Australian Government Department of Education and Training <http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf>.

Transparency in education has been neglected under the Safe Schools program by the lack of parental engagement in its adoption and implementation in schools. This has created concern among many parents. At one Melbourne school, parents of the Year 4 class were sent a letter by their school advising that Safe Schools was running a workshop for students 'to assist us with the gender choice of a student who is currently transitioning'.[114] Upon receiving this letter, several parents expressed concerns about the lack of notice and detailed information on what pupils would be taught in the workshop. As one parent of a Year 4 student explained, 'We just have lots of questions and we're not really getting answers… I'd like to know what my child will actually be taught in this workshop. This is a big deal and affects the whole school community.'[115] Other instances on non-transparency have been observed elsewhere. A case study of the Safe Schools program at Wollongong High School of Performing Arts revealed that the school's SSCA membership was not outlined anywhere in the school's anti-bullying policy, such that parents could only find out about the program by searching through the archives of school newsletters.[116] These examples, alongside many others,[117] illustrate the lack of transparency experienced by many parents under the program, especially with respect to the lack of information provided by SSCA member schools. As a result, if parents are unable to find out what their children are being taught under the program, an assessment of whether the State is complying with its obligation to respect parental rights therefore cannot be undertaken. The program thus reverses the presumption of control over children in favour of schools, challenging the requirement of transparency, and further circumventing the effectiveness of parental rights under article 18(4) of the ICCPR.

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[114] Rebecca Urban and Tessa Akerman, 'Year 4 pupil 'gender transitions' at Melbourne school', *The Australian* (online), 9 September 2016 <http://www.theaustralian.com.au/national-affairs/education/year-4-pupil-gender-transitions-at-melbourne-school/news-story/86ee2b26ec8e2f691baa3d7e8f795aa0>.

[115] Ibid.

[116] The Australian Family Association, above n 88, 30.

[117] One Victorian mother, Cella White, detailed how her son came home from school one day, telling her how the school told him that he could wear a dress to school, and how boys that identified as girls could use the girl's bathrooms. The mother had not at any stage been notified of this instruction by the school: *Cella's Story,* Youtube, 21 June 2016 <https://www.youtube.com/watch?v=rOmCyw9vRi4>; Concerns have also been raised about the information available about who is behind the program. When the SSCA resource 'All of Us' was first released, two main authors of the program, Roz Ward and Joel Radcliffe, featured prominently in the resource. However, following negative publicity of Ms Ward for her endorsement of Marxism, and Mr Radcliffe suggesting that parents do not have the power to shut down the Safe Schools program, revised versions of the resource no longer make any mention of them, with their names disappearing from the resource: Christopher Bush et al, above n 46; This is not the first time secrecy has been used to prevent parents from what is being taught, either. After details emerged that the Crossroads educational resource 'Do Opposites Really Attract' taught students that gender varied like the weather, the NSW Department of Education simply removed the resource from its website: New South Wales Department of Education, *Do Opposites Really Attract* (2015) CloudFront <https://d3n8a8pro7vhmx.cloudfront.net/marriage/pages/474/attachments/original/1475615796/Final-Do-opposites-really-attract-z3zbe9_(1).pdf?1475615796)>.

B *Freedom of Information Road-Blocks*

Another way in which educational transparency has been disregarded is through the New South Wales and Queensland state governments' failure to notify parents of which schools have become members to the Safe Schools Coalition Australia. On all state government websites in Australia, information has been provided to the general public on which schools are signed up to the SSCA.[118] This information is very important for many parents, who use it in their decisions of whether to enrol or unenroll their child from a particular school. On the 8th July 2016, however, the lists of New South Wales and Queensland schools signed up to the Safe Schools program were removed from the websites, such that parents could no longer see which schools were SSCA members.[119] The decision to delete the list from the websites came in the wake of strong public criticism of the program, schools withdrawing their membership, and parents removing their children from schools due to their SSCA affiliation.[120] According to the NSW Education Department, of the 31 public schools previously revealed as Safe Schools members, more than half had claimed they had been negatively targeted as a result.[121] However, rather than taking this public criticism and repudiation of the program as an indication of the need to look at how the program reflects the views of the community, the New South Wales and Queensland governments instead decided to remove the list of participating schools, such that parents could no longer see the list.

The decision of the two state governments has not been without public scrutiny. In New South Wales and Queensland, numerous formal requests for information were lodged in each state, however all requests have been refused.[122] The NSW State Department of Education justified its decision by arguing that 'releasing the names of participating schools could lead to the identification of individual students, thereby subjecting them to the potential for serious

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[118] See for example: Victoria Department of Education and Training, *List of Victorian Safe Schools* (16 March 2017) Victoria Department of Education and Training <http://www.education.vic.gov.au/Documents/about/programs/health/Safe%20Schools%20list%20-%2016%20March%202017.pdf>.

[119] Committee on Children and Young People, Parliament of New South Wales, *Sexualisation of Children and Young People* (2016) 58.

[120] Rebecca Urban, 'Secrecy over Safe Schools in NSW criticised', *The Australian* (online), 14 February 2017 <http://www.theaustralian.com.au/national-affairs/education/secrecy-over-safe-schools-in-nsw-criticised/news-story/7d58eeb7672fd26cdb97a2edf269b9bc>.

[121] Ibid.

[122] Queensland Department of Education and Training, *Disclosure Log – Right to Information* (2016) <http://deta.qld.gov.au/right-to-information/disclosure-logs/2016.html>; Elizabeth Tydd, *Review report under the Government Information (Public Access) Act 2009* (25 November 2016) Information and Privacy Commission New South Wales, 2.

harm, harassment or intimidation.'[123] This argument does not stand scrutiny, however. As observed by Information Commissioner Elizabeth Tydd, the harm test can only be satisfied where disclosure of information could 'reasonably be expected to expose a person to risk of harm' which requires more than a 'mere possibility, risk or chance… [and must] not be purely speculative, fanciful, imaginary or contrived'.[124] Under this standard, the NSW Department did not 'specify the person to which [sic] the possibility of harm applies, and substantiate the risk, and that the risk is serious', and failed to explain how publicly disclosing the name of a school alone could possibly subject an 'unspecified student' to harm.[125]

The consequences of this decision are evident. If parents can no longer go to the state government websites to establish if their school is, or is not, participating in the Safe Schools program, many parents will not know what materials their children are being taught. Parents will thus be unable to make informed decisions about their child's education, and will be denied the ability to ensure that their child's education is in accordance with their moral and philosophical convictions. In this way, parental rights as protected under article 18(4) are effectively circumvented and denied.[126]

VIII CONCLUSION

Prior to its enshrinement in the international human rights instruments, the prior right of parents to educate their children was for many centuries protected at both common law and in jurisprudence. Such protection recognised that, because parents are in the best position to care for their children, the State must not unreasonably interfere with parents' educational decisions, but rather must seek to affirm them in accordance with parents' desired instruction.[127] Despite the recognition that parental rights now enjoy under international law,

[123] Elizabeth Tydd, *Review report under the Government Information (Public Access) Act 2009* (25 November 2016) Information and Privacy Commission New South Wales, 7.
[124] Ibid 5.
[125] Ibid 6. Similar sentiments were also expressed by the state's privacy and information watchdog, who strongly rejected the claims of the NSW Department, recommending that a new decision should be considered. The Department has since reaffirmed its stance, however: Urban, above n 120.
[126] The lack of parental transparency under the program was brought particularly into the public limelight following comments made by SSCA coordinators regarding parental involvement in the program. In the words of a prominent author of the program's resources, Roz Ward, 'When people do complain then school leadership can very calmly and graciously say, 'You know what? We're doing it anyway, tough luck'. SSCA project manager Joel Radcliffe also stated in regard to the Safe Schools program: "Parents... seem to have a lot of power (in) schools… Parents don't have the power to shut this down.' Such statements have received significant backlash from parents and the wider community.
[127] Mill, above n 21.

more recently jurisdictions all over the world have challenged the rights of parents in education;[128] not least of all the Safe Schools program in Australia. Under the program, children are taught materials that fall short of the *Kjeldsen* requirements of 'objectivity', 'criticality' and 'pluralism', and allowed access to sexually inappropriate content, thereby undermining the desired instruction of many parents as protected under article 18(4) of the ICCPR. Contrary to article 10 of the ICESCR, the family unit is subject to arbitrary interference under the program, with children encouraged to access certain websites at school without the knowledge of their parents, and schools being advised to exclude parents from important decisions involving their children.[129] Because the program encourages schools to implement its materials across the curriculum, parents who conscientiously object to the program are effectively barred from exemptions from the SSCA materials, leaving them with the decision to either change schools or allow their children to be taught under the program. Lastly, following concerns raised by many parents and the wider community, the program's implementation in schools has been tarnished by a severe lack of transparency, particularly through the two state governments' refusals to publish the list of schools that are SSCA members. In this way, parental rights in education have been circumvented in many ways under the Safe Schools program, and reversed in favour of the State.

Therefore, in seeking to place the Safe Schools program in compliance with parental rights under the common law and international law, a number of reformative measures ought to be adopted. These measures include amending the program's materials to have a firmer basis in

[128] One example of a challenge to parental rights in education is that of the Canadian *Drummondville Parents' Case*. In the case, one couple on behalf of several thousand other parents sought to exempt their children from a provincial-wide mandatory course on ethics and religious culture. According to the parents, the course taught material that was inconsistent with their desired religious instruction, and so they did not want to expose their child to such contrary teachings. However, rather than recognise the prior rights of parents to direct the education of their children, the court instead placed the onus on the parents to prove the very harm that their application sought to avoid, effectively reversing the presumption of control over children in favour of the State. Contrary to the parents' assertions, furthermore, the court then took it upon itself to ascertain whether the course actually did undermine the couple's religious beliefs, and in finding to the negative, refused to grant exemption for the children. At no point did the Court adequately examine whether the goals of the State could be met by alternative means acceptable to the parents; a question surely relevant to reconciling the competing claims of the parties: *SL v Commission scolaire des Chênes* [2012] 1 SCR 235; Iain T. Benson,, 'An Associational Framework for the Reconciliation of Competing Rights Claims Involving the Freedom of Religion' (Unpublished PhD Thesis, University of the Witwatersrand, 2013) 94.

[129] Perhaps a useful analogue to 'the best interests of the child' test would be that of 'the best interests of the family'. Given the importance of family, group and community interests that arise in the context of parental rights, it would seem that the 'best interests of the child' test may have a focus that is too individualistic, and thereby neglect the rights of parents. For further discussion on the best interests of the child in the context of the family, see: Adhar and Leigh, above n 10, 205-207.

reliable research,[130] presenting issues with a greater diversity of views, and removing any links from the program's content to unsafe or otherwise inappropriate content.[131] The program must seek to affirm the family unit, by ceasing to encourage children to access materials without their parents' knowledge, and instead involving parents as much as possible in their child's education. In terms of the program's administration in schools, SSCA materials ought not to be implemented across the curriculum, but rather should be taught in separate classes such that parents may withdraw their child on conscientious grounds, whilst still allowing those who do want their child to participate in the program to reserve such an option.[132] Lastly, those that offer and endorse the program must display a significantly higher level of transparency; firstly, by the state governments publishing the list of SSCA member schools, and secondly, through increased communication by schools to parents on exactly what their children will be taught under the program.[133] Only through implementing these measures may the Safe Schools program accord with parental rights as protected at common law and international law, and only then may parents be afforded proper respect to direct and control the education of their children.[134]

[130] Strong criticisms of the Safe Schools program research were made by Patrick Parkinson: Parkinson, above n 67.

[131] Many of the links to inappropriate content have been taken down since being brought to public attention. However, some links still remain, such as the Minus18 article that instructs students to delete their web-browsing history: Micah Scott, *Cover Your Tracks* (31 December 2012) Minus18 <https://minus18.org.au/index.php/sex-love/item/144-cover-your-tracks>.

[132] Such an approach would be consistent with the reconciliation of competing claims between parents and the State, in that the state's goals may be achieved, whilst at the same time, respecting the rights of parents to direct and control the education of their children.

[133] A good measure to increase parental involvement may be for all states to adopt the Birmingham recommendations requiring parent body approval for the program to be adopted by schools, as well as parental consent via opt-ins for children to participate in the program: Simon Birmingham, *Statement of Safe Schools Coalition* (18 March 2016) Senator Birmingham <http://www.senatorbirmingham.com.au/Latest-News/ID/2997/Statement-on-Safe-Schools-Coalition>; Furthermore, an express onus could also be placed on schools to bring controversial materials to the attention of parents, so as to ensure that materials are consistent with parents' moral and philosophical convictions.

[134] It is not enough for changes to be only adopted by the Safe Schools program. To ensure that such educational programs cannot challenge parental rights to such an extent in future, Australia ought to consider enacting legislation consistent with the parental rights expressed under the ICCPR and CRC This legislation could mirror article 7.1 of the *South African Charter of Religious Rights and Freedoms 2010,* which provides that: 'The state, including any public school, has the duty to respect this right and to inform and consult with parents on these matters. Parents may withdraw their children from school activities or programs inconsistent with their religious or philosophical convictions.' Another option could be the adoption of a Charter of Educational Transparency or Charter of Family Rights.