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Submission to the Education Committee regarding the Australian Education Bill 2012

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

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

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

Clause 10 of the Bill provides:

10 Act does not create legally enforceable obligations etc.

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

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

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

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

I trust this submission is of assistance to the Committee

Yours sincerely

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