

Your Ref:
Our Ref: 874

09 February 2021

Dr Brendan Gogarty
Acting Director
Tasmania Law Reform Institute
Faculty of Law
Private Bag 89
HOBART TAS 7001

By email: Law.Reform@utas.edu.au

Dear Dr Gogarty

Re: Inquiry into Sexual Orientation and Gender Identity (SOGI) Conversion Practices

Thank you for inviting my comment on the Tasmania Law Reform Institute (TLRI) Issues Paper No. 31, *Sexual Orientation and Gender Identity Conversion Practices* (Issues Paper) and for agreeing to a short extension of time in which to do so. I am pleased to contribute to this important Inquiry.

I provide my consent for the TLRI to treat this submission as a “public submission”.

Role of the Commissioner for Children and Young People

The office of Commissioner for Children and Young People is established under the *Commissioner for Children and Young People Act 2016* (CCYP Act). The Commissioner’s general functions include:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives; and
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.¹

¹ Section 8(1) of the *Commissioner for Children and Young People Act 2016* (Tas)



In performing these and other functions under the CCYP Act, the Commissioner is required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC).²

Further, the Commissioner must give special regard to the needs of children and young people who are vulnerable or disadvantaged.³

Consistent with my statutory functions, this submission focuses on issues of importance to the rights and wellbeing of Tasmanian children and young people aged less than 18 years.

Background

My comments are informed by the comprehensive background information provided by the TLRI in the Issues Paper. The following information included in the invitation to comment provides a useful summary of the key understandings underpinning my submission:

- Sexual orientation and gender identity (SOGI) conversion practices are attempts to change or suppress a person's sexual orientation or gender identity; to 'convert' someone who is homosexual or transgender into a heterosexual or cis-gendered person (a person whose gender identity corresponds with the sex they were assigned at birth).
- SOGI conversion practices are often based on pseudo-scientific ideas that non-conforming sexual orientation or gender identity is the result of dysfunction, trauma or brokenness, and can be 'healed', suppressed or changed.
- Medical and psychological practitioners have long accepted that LGBTQA+ status is not a physical or psychological disorder in any sense. Clinical studies indicate that SOGI conversion practices therefore do not work and also cause trauma and long-term harm to people exposed to them. A range of peak national and international bodies have therefore declared such practices to be unscientific, degrading, dangerous and contrary to human rights and have called for them to be banned.
- National studies and survivor reports indicate that SOGI conversion practices are occurring across Australia. As such, Queensland and the ACT recently passed laws to ban SOGI conversion practices, and on 25 November [2020] the Victorian Government introduced a Bill to criminalise conversion practices.

The Issues Paper invites respondents to provide anecdotal evidence on the prevalence and impact of SOGI conversion practices in Tasmania. While I am not currently aware of the prevalence of SOGI conversation practices in Tasmania, I would agree with the TRLI's view that the 'general prevalence of these practices within Australia suggests that they may be

² Section 3(1) of the *Commissioner for Children and Young People Act 2016 (Tas)*

³ Section 3(2)(b) of the *Commissioner for Children and Young People Act 2016 (Tas)*



taking place in Tasmania given the general ubiquity in faith adherence and practices across the country'.⁴

Comment

Nature, scope and meaning of SOGI conversion practices

The TLRI has adopted the following working definition of 'SOGI conversion practices' for the purposes of its Issues Paper:

Sexual orientation and gender identity (SOGI) conversion practices means:

- (a) acts or statements;
- (b) that are aimed at changing, suppressing, or eradicating the sexual orientation or gender identity of another person; and
- (c) are based on a claim, assertion or notion that non-conforming sexual orientation or gender identity is a physical or psychological dysfunction that can be suppressed or changed.

I am generally comfortable with this broad definition for the purposes of consultation to inform TLRI's Inquiry. For clarity and to avoid unintended negative consequences for children and young people, any legal definition adopted should clearly identify beneficial and legitimate practices *not* intended to be captured by the definition – for example, conversations with a child or young person intended to assist them to explore their gender identity, medical or psychological assessment or care which is part of gender transition therapy etc.

Proposed section 5(2) of the Victorian Change or Suppression (Conversion) Practices Prohibition Bill 2020 (which passed the Victorian Parliament on 4 February 2021) provides a useful description of practices or conduct that would not amount to a SOGI conversion practice. Proposed section 5(3) also outlines specific practices intended to be covered by the prohibition. I support this drafting approach.

Applicable rights under the UN Convention on the Rights of the Child

It is unfortunate that initiatives to prohibit harmful and unethical SOGI conversion practices have been conflated with concerns about limitations on the right to freedom of religious expression. In my opinion, it is particularly important to reiterate that the right to *manifest* one's belief or religion is qualified because of the potential for a person to manifest their religion or beliefs in ways that infringes on the fundamental rights and freedoms of others. See Article 18(3) of the *International Covenant on Civil and Political Rights* and Article 14(3) of the *Convention on the Rights of the Child*).

Under the *UN Convention on the Rights of the Child*, children are afforded the rights to identity, health and development and to freedom of thought, conscience and religion. They are also afforded the rights to be protected from violence and harmful practices such as torture or other cruel, inhuman or degrading treatment. Importantly, it is a core principle of

⁴ Issues Paper, 2.3.3



the Convention that in all actions concerning children, the best interests of the child shall be a primary consideration.

The Committee on the Rights of the Child (the Committee) has emphasised ‘the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy’.⁵ The Committee has specifically condemned practices designed to change sexual orientation and has urged States to eliminate them those practices.⁶

In a report to the UN Human Rights Council, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Independent Expert) found that subjecting children to so called “conversion therapies”:

runs counter to States’ obligation to protect them from violence, harmful practices and cruel, inhuman or degrading treatment, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of taking the best interests of the child as a primary consideration at all times.⁷

In that report, the Independent Expert also called for States to take measures to ban practices of so called “conversion therapy”.⁸

Consent

There is clear evidence of the ineffectiveness and long-term psychological and physical harms associated with SOGI conversions practices. Children and young people are considered especially vulnerable to SOGI conversion practices.⁹

The harmful effects associated with SOGI conversion practices have been found to include:

- severe psychological distress
- poor self-esteem
- anxiety and depressive tendencies
- shame, guilt and grief
- social isolation
- high-risk behaviours including substance abuse
- disengagement from school
- loss of faith

⁵ Committee on the Rights of the Child. *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 34.

⁶ Ibid.

⁷ Madrigal-Borloz, V. *Practices of so-called “conversion therapy”, Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (May 2020), par 73.

⁸ Ibid, par. 74.

⁹ Ibid, par.71.



- suicidal ideation and suicide attempts.^{10, 11}

Further, longer-term SOGI conversion practices create chronic stress associated with poor health outcomes including ulcers, gastro-intestinal disorders, skin diseases, sexual and eating disorders.¹²

I recently had the privilege of speaking with an adult survivor of SOGI conversion practices, elements of which occurred during this person's adolescence via Christian counselling underpinned by an ideology that LGBTQA+ people are damaged or "broken" and can be "fixed". The profoundly harmful effects experienced by this person have greatly assisted to provide me with insight into the insidious and unethical nature of SOGI conversion practices and their effects.

The Independent Expert considered the role of parents in the context of subjecting children to SOGI conversion practices:

While the decision to subject children to those practices may be taken by some parents due to the belief that it serves the child's best interests, research has shown that parents tend to be motivated by religious beliefs that consider sexual and gender diversity to be "immoral" and incompatible with their religious tenets, but are ill-informed about the nature of sexual and gender diversity, the invalidity and ineffectiveness of those practices and the significant and possibly life-long injury that they will cause their children. In the light of those realities, subjecting children to practices of "conversion therapy" constitutes ill treatment and may constitute torture, as well as contravene domestic and international laws against child abuse and neglect.¹³

In light of the evidence of the harmful effects of SOGI conversion practices and authoritative human rights statements such as the one set out above, I cannot perceive a situation in which it could ever be in a child's best interests to undergo SOGI conversion therapy. Accordingly, I would not support a situation where a parent of a child or a mature minor could consent to SOGI conversion practices.

Options for law reform

Tasmanian law does not currently define, prohibit or explicitly regulate SOGI conversion practices. While some existing laws (including criminal, civil and anti-discrimination laws) and regulations may have relevance or application, the Issues Paper identifies several limitations and uncertainties about the applicability and effectiveness of these laws. This is of particular concern given the breadth of contexts in which SOGI conversion practices may occur.

Accordingly, it is my view that law reform is necessary to ensure that Tasmanian children and young people are appropriately protected from the harmful effects of SOGI conversion practices. Tasmania is well positioned to progress law reform informed by reforms which have progressed in other jurisdictions, most recently Victoria.

¹⁰ Ibid, paragraphs 56-58.

¹¹ Jones, T, Brown, A, Carnie, L, Fletcher, G, & Leonard, W. *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia*. Melbourne: GLHV@ARCSHS and the Human Rights Law Centre, 2018.

¹² Madrigal-Borloz, V. *Practices of so-called "conversion therapy"*, Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (May 2020), paragraphs 56-58.

¹³ Ibid, para 71.



While it is beyond the scope of this submission to provide comprehensive comment on an appropriate model for law reform, it appears to me that to be effective, any reform should be comprehensive and multi-faceted in its approach.¹⁴ By multi-faceted I mean that any approach to regulating SOGI conversion practices should encompass a range of responses. The Independent Expert has made recommendations on how States should implement a ban on so called “conversion therapies”, including by:

- clearly defining the prohibited practices and ensuring public funds are not used to support them;
- banning advertising of and the carrying out of conversion practices in health-care, religious, education, community, commercial and other settings;
- establishing a system of sanctions for non-compliance commensurate with the gravity of the non-compliance;
- creating monitoring, support and complaint mechanisms with access to reparation, rehabilitation and legal assistance for victims.¹⁵

Further, and specifically in relation to children and young people, the Independent Expert has recommended that States:

Take urgent measures to protect children and young people from practices of “conversion therapy”, including by giving priority to the design and implementation of monitoring programs for health-care, religious, education, community, commercial and any other settings, public or private, where children and young people are deprived of their liberty by organs such as national human rights institutions or, if applicable, national preventive mechanisms.

Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of, and the damage caused by, practices of “conversion therapy”¹⁶

Clearly, any prohibition of SOGI conversion practices should be accompanied by robust support mechanisms for survivors, and a strong focus on community awareness. The voices of survivors of SOGI conversion practices should be central to any conversation about law reform.

The Victorian Change or Suppression (Conversion) Practices Prohibition Bill 2020, which recently passed the Victorian Parliament, provides an example of a multi-faceted approach to law reform on this issue in an Australian jurisdiction.

The Bill denounces and prohibits conversion practices (described in the Bill as ‘change or suppression practices’) and:

- creates criminal offences which target:

¹⁴ Jones, T, Brown, A, Carnie, L, Fletcher, G, & Leonard, W. *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia*. Melbourne: GLHV@ARCSHS and the Human Rights Law Centre, 2018, 5.

¹⁵ Madrigal-Borloz, V. *Practices of so-called “conversion therapy”*, Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (May 2020), para 87.

¹⁶ Ibid.



- persons engaged in change or suppression practices which cause injury or serious injury;
- persons who advertise change or suppression practices; and
- persons who remove others from Victoria for the purposes of subjecting them to change or suppression practices which cause injury;
- establishes a civil response scheme within the Victorian Equal Opportunity and Human Rights Commission (VEOHR) to:
 - promote a greater understanding of, and compliance with, the prohibition of change or suppression practices;
 - consider and resolve allegations of change or suppression practices that fall short of the criminal standard, through education and facilitation functions; and
 - investigate serious or systemic change or suppression practices and enforce the outcomes of such an investigation.¹⁷

Conclusion

I look forward to receiving the TLRI's Final Report for this Inquiry in due course.

In the meantime, please do not hesitate to contact me if you require clarification of the matters I have raised.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc *The Hon. Elise Archer MP, Attorney General
The Hon. Sarah Courtney MP, Minister for Health
The Hon. Roger Jaensch MP, Minister for Human Services
The Hon. Jeremy Rockcliff MP, Minister for Mental Health and Wellbeing*

¹⁷ [Change or Suppression \(Conversion\) Practices Prohibition Bill 2020 - Statement of Compatibility](#)