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The Anglican Diocese of Tasmania's submission in response to the Tasmanian Law Reform Institute's Sexual Orientation and Gender Identity Conversion Practices (Issues Paper No 31; November 2020)

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## **Introduction**

The Anglican Church in Tasmania welcomes the opportunity to provide feedback on possible reforms to Tasmanian law to address sexual orientation and gender identity (SOGI) conversion practices. The Anglican Church of Tasmania takes seriously Jesus' command to love our neighbours as ourselves and the biblical injunctions to honour all and do good to all as members of our common society.

We acknowledge that members of the LGBTQA+ community experience higher rates of mental illness, substance abuse and suicide, and recognise that the Anglican Church has not always treated LGBTQA+ people with the dignity, respect and love they deserve to be shown as those made in the image of God. We have committed ourselves to doing better.

We recognise that there have been deeply harmful "conversion therapy" practices employed in the wider Australian community, such as those outlined in Queensland's legislation. We condemn these practices where they have occurred and are deeply grieved by the harm caused to those subjected to them. We are thankful that the paper notes that you are unlikely to find that such practices currently exist in Tasmania.

## **Human Sexuality**

We believe that human sexuality is a gift from God. All people are made in the image of God and precious in his sight and therefore worthy of dignity and respect regardless of their age, ethnicity, ability, sexuality or gender identity.

Every Anglican church in Tasmania welcomes and accepts people of diverse sexualities. We do not practice discrimination in the welcome and acceptance of people in our churches. Anglican churches are diverse communities made up of young and old, wealthy and poor, English speakers and people who speak other languages, Australians and migrants, adults and children, heterosexual and homosexual, transgender and cisgender. There are people representing each of these categories in our churches, and they are safe and welcome.

Each week Anglican churches listen to readings from the Bible in our Sunday services. The reading from the Bible is the subject of instruction for the congregation. On occasion, these readings touch on issues of sexuality and human identity.

The Anglican Church of Tasmania does not believe that sexual attraction can be changed or eradicated. It does however believe in the Christian virtue of self-control, and the Christian ethic of marriage between a man and a woman. Historically and biblically, this virtue and ethic has seen sexual expression limited to marriage between a man and a woman, and sexual abstinence outside of that. While this teaching may seem anachronistic to some in contemporary Australia, it has been the foundation of Western Society for many centuries, and it is still the dominant view throughout the

world. The Bible does not condemn sexual orientation and sexual desires but focuses on how we live with those desires and the proper expression of them.

Since the time of Jesus, the Christian Church has taught its adherents the virtues of self-control. Self-control applies to a range of behaviours including the way we speak, the use of alcohol and drugs, the use of money, the expression of sexuality, and a variety of other things. With respect to sexual behaviours, members of our churches may choose to exercise self-control and refrain from expressing their sexual desires outside of marriage, in line with historic teaching.

It is our practice to support people when they choose this path, regardless of their sexual orientation. We respect people's personal choice to adhere to this teaching. Our church has a well-developed Code of Conduct that includes guidance against spiritual abuse and manipulation. All clergy and those holding positions of authority within the Anglican Church are required to adhere to this Code. The support we offer to help people with their self-discipline with respect to sexuality may involve prayer, Bible study, accountability, reading and pastoral conversations. No one is forced into any of these things, and it is most often gladly received.

We are not aware of a single instance in the Anglican Diocese of Tasmania where a person has been counselled to change their sexual orientation or gender identity. We are aware of many instances where churches are supporting people to live in accordance with Christian teaching on the expression of sexual desires regardless of their orientation or gender identity.

### **General Comments**

The Issues Paper itself states that there is no evidence that SOGI conversion practices are currently occurring in Tasmania (2.3.1). We know of no Anglican churches in Tasmania that engage in SOGI conversion practices. We believe it is essential that before legislating against SOGI conversion practices, there needs to be further peer-reviewed research into the prevalence of these practices in Tasmania.

We are concerned that the Issues Paper focuses solely on the harmful effects of sexual orientation conversion practices but does not cite any examples of the harmful effects of any practices relating to gender identity. There is a distinct lack of research on practices that affirm a gender identity that is different from one's biological sex, and there is also no cited material on practices that aim to help people with a differing gender identity to live as their biological sex. We note that the medical and scientific communities are both far from resolved on the question of gender identity and the impact of all practices in this space. We caution the TLRI to not let law reform move ahead of the science.

**Question 1: After considering the background and working definition (see [1.3.23] on page 13), in your opinion, what are and are not 'sexual orientation and gender identity conversion practices'?**

The Issues Paper states at 1.2.3 that care must be taken when defining SOGI conversion practices as, "An overly broad definition risks capturing acts which are not intended to achieve the ends the law seeks to address, or which do not cause harm, or might unnecessarily burden other rights or freedoms."

We agree with this statement and suggest that the definition proposed at 1.3.23 is too broad and needs significant revision for the following reasons.

1. There are significant differences between sexual orientation conversion practices and gender identity conversion practices. In fact, in Part 2 of the Issues Paper the majority of the articles cited refer to the harmful effects of sexual orientation conversion practices only, and do not include studies on the effects of practices designed to support those with differing gender identities. Additionally, none of the peak bodies opposed to conversion practices cited in Part 2 mention gender identity conversion practices (2.2.14ff). For this reason, we suggest that the definition needs to consider sexual orientation conversion practices and gender identity conversion practices as two separate activities, and we would like to see the TLRI withhold recommendations for legislation on gender identity conversion practices until such a time as the medical community is more resolved.
2. We are concerned about the language of suppression and eradication. This language necessarily conveys negative or unhealthy behaviours and also connotes significant imposition on a person's freedom of choice. We are concerned that this language will be used to proscribe laws against healthy and helpful practices that are commonplace teaching in Anglican churches. Christians have long believed in the virtue of self-control as a life-giving and healthy way to live, and in accordance with the Bible have urged believers to follow a pattern of life laid out in the Scriptures, regardless of orientation or identity which involves sexual abstinence outside of marriage as understood by our church. We would like to see some clarity in this space to allow for historical Christian teaching and practice to continue. While we cannot comment in detail about the teaching and standards for sexual ethics in other faith traditions, similar teaching is contained in the holy books of Judaism and Islam. If statements such as 1.2.11 are determinative of how "conversion practices" in the proposed legal reform are to be understood, it is difficult to see how this would not undermine the "freedom of thought, conscience and religion" recognised under common law. Indeed, our reading of the proposed legal changes seems to show that they are deliberately targeting the teaching and practice of faith communities.

The following voluntary practices, which are regularly undertaken in Anglican communities, should be explicitly excluded from the definition:

- i. Public preaching and teaching of the biblical sexual ethic
- ii. Bible study
- iii. Prayer, both in small groups and one-on-one
- iv. Giving spiritual guidance in accordance with a person's choice and the Bible's teaching
- v. Accountability partners, in accordance with a person's choice and the Bible's teaching
- vi. Biblical counselling
- vii. Support groups

We believe the following pared back definition would cover the concerns that led to the publication of the Issues Paper.

Sexual orientation conversion practices means:

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

**Question 2: Should people be allowed to consent to SOGI conversion practices? If so, at what age, and under what conditions?**

If coercion into SOGI conversion practices has happened in the past by members of the Anglican Church, this has been in spite of the teachings of Jesus, not because of them.

It has been the mission of the church, for over 2000 years, to proclaim the Bible's message and invite people to come and respond to it. People are given the choice to listen and submit to the teachings of the church. Where an unmarried individual, regardless of orientation or identity, seeks to live in line with the biblical ethic (i.e., as a celibate person), we want to see provisions for this choice in any proposed legislation, accompanied by provisions for members of that person's religious community to support them in prayer, Bible study, accountability, reading and pastoral conversations.

Freedom of thought, conscience and religion are recognised rights under common law and apply in Tasmania. This means that anything demonstrably sourced from the sacred texts of a faith or from church traditions/teaching should remain protected under Article 18 of the International Covenant on Civil and Political Rights, given they

form an expression of religious tenets. Individuals who are same sex attracted and/or gender diverse have these same rights to freedom of thought, conscience and religion, and the right to practice their religion. Ensuring that such individuals can continue to consent to the practices listed above is vital to ensure that the balancing of these rights with the right to individual sexual expression is proportionate. Furthermore, religious communities should be able to continue to pass on the teachings and practice of their tradition to those who belong to or join their community, both through their religious offices and parents to their children.

People must be free – both inside and outside of religious communities – to live out their own sexuality in a way of their own choosing. A person of faith seeking to live in accordance with the received teaching/tradition of their religious community and in relationship to that community should not be considered as an ideologue (1.2.11) in the pejorative sense in which it is used in this paper.

We welcome the observation that “holding or expressing religious, ethical or personal views about LGBTQA+ people is not generally considered to be necessarily a form of SOGI conversion practices,” (1.2.9), but remain concerned that the Issues Paper, in response to the *SOGICE Survivors Statement*, attempts to distinguish between “the profession of religious beliefs” and “ideologically motivated behaviour that is distinct from those beliefs” (1.2.12). We note the discussion in paragraphs 1.2.13 – 1.2.18 and agree with the tenor of that discussion that proscribing an ideology or theology would create an impossible task for courts and would unacceptably undermine the secular Australian values of freedom of thought and conscience. The TLRI should not bring any recommendation that would require any authority to ‘peer into men’s souls’ or would mark out certain beliefs as illicit. Without conceding that any legislative change is necessary, the approach inherent in 1.2.17 of targeting harmful behaviour (rather than ideology or belief) would be appropriate.

We are astounded that the TLRI is seeking input on “whether ideology should be proscribed within Tasmanian law or not” (1.2.18). This is an untenable idea, as we know that countries where Christian ideology is proscribed (North Korea, Afghanistan, Somalia, Libya, Pakistan, Eritrea, Yemen, Iran, Nigeria, India, Iraq and Syria) could not be described as open, free, secular democracies. It is surprising to us that the TLRI would even ask for feedback on a question that is clearly outside the intent of the constitution. It is not the role of the government to legislate ideology, indeed, to do so would be a significant overreach of power in a secular democracy, especially in this context and on this issue.

**Question 3: Have you been involved in or offered, or are you aware of, any forms of SOGI conversion practices in Tasmania? If so, what were the effects on you, or the person exposed to them?**

We are not aware of a single instance in the Anglican Diocese of Tasmania where a person has been counselled to change their sexual orientation or gender identity.

We reiterate the TLRI's own point that, "overall, these studies emphasise the difficulty of assessing the harm or benefits of SOGI conversion practices" (2.2.2).

The usual practice in Anglican Churches in Tasmania is to preach and teach the Bible. This includes teaching on sexuality, in line with historical Christian teaching (sexual expression limited to marriage between a man and a woman, and sexual abstinence outside of that), whenever those matters come up in the cycle of readings. If someone chooses to live by the Bible, we help them, by praying and accountability, Bible study, reading and pastoral conversations. This support is never foisted on an individual but is offered freely.

**Question 4: Do you think that Tasmanian law should be changed to address SOGI conversion practices? If so, should this be through comprehensive reform, amendment or both (a hybrid)?**

The Anglican Church of Tasmania does **not** think the law should be changed to address SOGI conversion practices. The TLRI has not been able to produce evidence that such practices are currently occurring in Tasmania (2.3.1), and there are already sufficient provisions under existing Tasmanian law to protect the LGBTQA+ community from the more harmful SOGI conversion practices.

We note that the instances of conversion practices for which there is some evidence are instances of 'therapies' offered by medical, psychiatric/psychological or counselling services.

We would like to see the TLRI recommend proportional limitation in any proposed legislative changes. That is, we believe that imprisonment and/or damages is a disproportionate response to hurt caused by a statement or act performed by a member of a religious community. The Anglican Church of Tasmania seeks to be an open learning institution that listens and responds graciously when told that a practice is harmful. We do not believe that the government should be proscribing ideology and making, for example, prayer, a criminal act.

**Question 5: Should some or all forms of SOGI conversion practices be criminalised in Tasmania? If so, which, if any, should be dealt with as serious (indictable) crimes and which, if any, should be dealt with as less serious (summary) offences?**

The Anglican Church of Tasmania does **not** believe that SOGI conversion practices should be criminalised, for three reasons.

1. There remains significant uncertainty around the breadth of the definition, which currently would include coercive assaults at one end of the spectrum, down to mere speech where the speaker may not be aware of any impact on his or her listeners. The criminal law should only be brought to bear on the most serious instances, and already has sufficient provisions for acts at this more serious end of the scale.
2. Unlike other criminal acts like murder, rape and theft there may be factual uncertainty around whether the acts have occurred, even where the objective facts are agreed. This is because of the subjective nature, particularly at the lower end of the scale, of how some words or acts might be received.
3. There is uncertainty around the impact of these practices on an individual participant. As an example, for one LGBTQA+ person, an offer of prayer and support might be appreciated, while for another the same offer could be offensive.

Criminalisation of these acts would be a disproportionate response to the hurt caused by them.

**Question 6: Should some or all forms of SOGI conversion practices be made civil wrongs in Tasmania? If so, what sort of practices should people be liable for and how should those subject to such practices be compensated?**

The Anglican Church of Tasmania does **not** believe that SOGI conversion practices should be made civil wrongs. There are significant challenges associated with compensation for distress or hurt caused by an action.

We believe that the Issues Paper has set out to examine, and possibly legislate against, the more egregious forms of SOGI conversion practices, which have largely occurred in the medical and psychological settings. We believe that there are already sufficient legal provisions in place to protect the LGBTQA+ community from these wrongs.

**Question 9: Are there any other matters that you consider relevant to this Inquiry and would like to raise?**

We can agree that all Tasmanians have the right to personal autonomy, and that must include the right to seek counsel on issues of sexual orientation and gender identity, and the right to choose whether to embrace a particular behaviour or not. Individuals should never be the subject of coercion, either into a historical Christian sexual ethic or a more sexually progressive set of behaviours.

The Anglican Church of Tasmania believes that, as a society, we need to learn to live together in diversity and have civil conversations about what it means to be human. This must include allowing room for people to express a diversity of views which are not self-evident to all – an outcome that will not be achieved by a new or altered piece of legislation.

We would like to suggest to the TLRI that there is a general sense of misunderstanding in the wider Tasmanian community around SOGI conversion practices. We recognise that some legal protections need to be in place to protect vulnerable people from the more extreme SOGI conversion practices but given the lack of data on the prevalence of these practices in Tasmania, we suggest that social change in this area would be better achieved through a sustained program of community education. The Anglican Church of Tasmania would be open to helping deliver a community education package on this issue.

For further information or clarification please contact:

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