

Tasmanian Law Reform Institute
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RE: Conversion Practices: Law Reform Options for Tasmania

Thank you for the opportunity to make a submission to your community consultation on possible reforms to Tasmanian law to respond to sexual orientation and gender identity (SOGI) conversion practices.

Civil Liberties Australia (CLA) stands for the fundamental rights and liberties of people generally recognised around the world as well as the laws, policies, processes and norms that have traditionally made Australia a free and open society. This submission draws upon our expertise and experience in these areas.

Fundamental human rights affected by SOGI conversion practices

CLA does not support sexual orientation or gender identity conversion practices of any kind or under any circumstances and we call for these practices to be banned.

Comprehensive international studies have yielded no scientific evidence that sexual orientation can be changed. Indeed, studies have shown that efforts to “convert” a person’s sexual orientation can cause significant and long-lasting harm to individuals, including by misrepresenting a person’s sexuality as a disorder. (For references, see other submissions to this consultation, including by the Royal Australian & New Zealand College of Psychiatrists, as well as submissions and testimony given to reform processes in other states and territories.)

As such, these conversion practices negatively impact upon a person’s right to life as well as their right not to be subject to cruel, inhuman or degrading treatment or punishment.

However, our concerns about SOGI conversion practices are much more fundamental than the issue of whether or not they “work”. The right to equality and non-discrimination are core principles of human rights, enshrined in international and domestic law and these guarantees apply to all people, regardless of sex, sexual orientation and gender identity just as it is unlawful to discriminate against a person based on their skin colour, race, sex, religion or any other status.

CLA submits that SOGI conversion practices deny this fundamental right to dignity and equality by advocating the notion that a person’s sexual orientation is a disorder, that it can be considered “aberrant”, “deviant” or “a sin”. CLA does not believe that a civilised society would tolerate such notions being attached to a person’s skin colour or religion, for example, and nor should we tolerate practices that reinforce the prejudice and discrimination LGBTIQ+ Australians already face.

Explanatory memoranda and introductory speeches in the ACT, Queensland and Victoria have explicitly stated that addressing this denial of the fundamental right to equality and non-

discrimination is a principal objective of the legislation restricting or banning conversion practices in those jurisdictions.

Statements by ministers and members of parliament in those jurisdictions have used terms like “abhorrent”, “degrading” and “dehumanising” to describe conversion practices. We agree with those descriptions and we support urgent action to ban conversion practices.

Conversion practices and religious liberty

We understand that for some people and for some religious groups, SOGI conversion practices are seen as a matter of religious freedom and that therefore they should be permitted under the law. CLA does not support this view.

A ban on SOGI conversion practices may be seen as a limitation on religious liberty as it would not permit the manifestation or demonstration of a particular religious belief, or the expression of information or ideas, about sexuality and gender identity. The right to have or adopt a religion or belief is a matter of individual thought and conscience, considered to be absolute and unqualified in international law. However, the right to manifest or demonstrate religion or belief may be subject to reasonable limitations to the extent that such manifestations or demonstrations affect others.

In reconciling these competing rights and freedoms, the key issue is proportionality: are the proposed limitations necessary to safeguard one set of rights and freedoms while at the same time causing the minimum restriction of other rights and freedoms? Restrictions on SOGI conversion practices in other jurisdictions have achieved this balance. They specifically address the important and legitimate objective of preventing serious harms towards LGBTIQ+ individuals and protecting the right to be free from discrimination on the basis of sexuality or gender identity.

At the same time, they do not restrict mere expressions of religious tenets or beliefs relating to sexuality or gender identity. The laws in other jurisdictions do not interfere with religious teachings more broadly, or prevent religious schools from teaching the tenets of their faith, including teachings on sexuality or gender identity.

Prominent religious leaders from all major faiths have themselves supported banning SOGI conversion practices. In December 2020, over 400+ religious leaders from over 35 countries, representing all major religions around the world, signed a declaration in which they called for “all attempts to change, suppress or erase a person’s sexual orientation, gender identity or gender expression ... to end, and for these harmful practices to be banned” (see: <https://globalinterfaith.lgbt/declaration>). In their declaration, they recognised “with sadness that certain religious teachings have often, throughout the ages, caused and continue to cause deep pain and offense to those who are lesbian, gay, bisexual, transgender, queer and intersex” and they acknowledged “with profound regret, that some of our teachings have created, and continue to create, oppressive systems that fuel intolerance, perpetuate injustice and result in violence.”

Responses to the TLRI’s issues paper

In relation to the specific questions set out in the TLRI’s issues paper (Issues Paper No 31, November 2020), CLA provides the following responses.

Question 1: *After considering the background and working definition, in your opinion, what are and are not ‘sexual orientation and gender identity conversion practices’?*

CLA broadly supports the working definition of SOGI conversion practices in the issues paper.

However, we suggest that the use of the word 'statements' is vague and may be overly broad. We prefer definitions cited in the issues paper that have been used in other jurisdictions that refer, for example to a "practice, treatment or service" (Canada), "any treatment, practice or sustained effort" (Malta), and "practice or treatment" (Victoria, with minor variations in the ACT and Queensland).

We note also that the definition presented in the executive summary of the issues paper is slightly different to the definition presented on page 13 in that the former includes the words "either express or implied". We think these words are important and should be retained.

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

CLA considers the possibility of consent to conversion practices to be deeply problematic. If someone agrees to undergo such a practice because of false claims that sexual orientation or gender identity can be changed, then such consent cannot be considered legitimate. Similarly, if someone agrees to a conversion practice because they are misled about the nature of sexual orientation as being dysfunctional or a psychological disorder, then that consent too cannot be legitimate.

For these reasons, we submit that SOGI conversion practices should not be permitted at any age or under any circumstances.

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?*

Given the sensitivities of this issue, we have not canvassed CLA's membership about their personal experiences of SOGI conversion practices. However, we note submissions and testimony that have been made to consultations and inquiries in other states and territories as well as surveys and peer-reviewed research conducted around the world, which have all revealed substantial negative effects on people subjected to conversion practices.

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)?*

CLA believes Tasmanian law should be changed in order to ban SOGI conversion practices to protect the fundamental rights of LGBTIQ+ Tasmanians. This would be in line with reforms in other states and territories and around the world and in line with the declaration by global religious leaders under the banner of the Global Interfaith Commission on LGBT+ Lives (see link above).

CLA does not have a particular view as to the form of the reforms to address SOGI conversion practices. The effect of the reform should be comprehensive and it should send the strongest possible message that such conversion practices are unacceptable.

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?*

CLA does not have a position on which forms of conversion practices should be treated as indictable or summary offences. However, we submit that the law should reflect the implications for the fundamental human rights of the person affected, the potential for serious and long-term harm, and the strong rejection of those practices by the community.

We also submit that law reform in this area should provide for responsibility to fall not only on individuals carrying out conversion practices but also on institutions that permit, endorse, or encourage such practices, explicitly or implicitly.

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?*

CLA does not consider conversion practices should be civil wrongs. This would suggest they are less harmful than they are and would put the onus on victims to demonstrate this harm.

Question 7: *Should any existing Tasmanian laws (besides criminal laws or the Civil Liability Act 2002 (Tas)) be amended to cover SOGI conversion practices? If so, which ones and in what way?*

CLA has no particular expertise in the existing laws that might need to be amended to give effect to comprehensive elimination of conversion practices.

Question 8: *Are there any other models or approaches that are preferable to, or should complement, changing the law?*

We note that since the issues paper was released, legislation in Victoria has progressed through Parliament. CLA notes the strong support for the Victorian model by survivors and advocates and we submit that their views should be given the greatest weight.

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

Law reform in Tasmania should strongly affirm that LGBTIQ+ people are neither “broken” nor “disordered” and we recommend that law reform should be accompanied by public education about the equality, dignity and rights of LGBTIQ+ people and the harm perpetrated by conversion practices.

CLA submits that there should be a redress scheme for the support of survivors of conversion practices given that people in positions of authority and public responsibility have known the potential for significant harm for at least the last few decades.

As is provided for in the Victorian legislation, the reform should empower an independent public officer to consider and respond to reports of conversion practices from any person, as well as launch investigations where there is evidence of conversion practices.

Yours sincerely

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