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By email to: [Law.Reform@utas.edu.au](mailto:Law.Reform@utas.edu.au)

Dear Dr Gogarty

**Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Issues Paper No 31, November 2020)**

Please accept the following information in relation to Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Issues Paper No 31, November 2020). I have provided this in the form of information rather than a submission to your Issues Paper as I am keen to share some of the knowledge gained through having conducted an Inquiry into Conversion Practices here in Victoria.

By way of background, in February 2017 the *Health Complaints Act 2016 (the Act)* commenced in Victoria to establish my office and provide the powers and functions to allow us to play a role in supporting safe and ethical healthcare. It did this by strengthening the powers of my office to deal with complaints about the provision of health services in Victoria and to introduce new powers to investigate unsafe and unethical health service providers.

Schedule 2 of the Act contains a *General code of conduct in respect of general health services (the Code)*. The Code applies to all general health service providers which are those who are not regulated by the Australian Health Practitioner Regulation Agency (**Ahpra**).

The most relevant Code clauses applicable to conversion therapy are:

- clause 12(2)(a): *a general health service provider must only provide services or treatments to clients that are designed to maintain or improve clients' health or wellbeing;*

and more broadly:

- clause 1(1): *A general health service provider must provide general health services in a safe and ethical manner.*

My office can deal with complaints about registered providers but will generally refer professional conduct issues to Ahpra. We also resolve complaints relating to general health service providers (i.e. all those health service providers not regulated by Ahpra). My office may also investigate general health service providers where a possible breach of the Code has occurred.

During and after an investigation I may issue interim or permanent prohibition orders that can impose a ban or conditions on a provider with respect to the provision of health services.

The Act also provides for the Minister or a House of Parliament or a Parliamentary Committee to refer any health service matter to me for inquiry, quite separate from complaints resolution or investigations.

On 15 May 2018 the then Minister for Health, the Hon. Jill Hennessy MP, referred the matter of 'gay conversion therapy' or 'ex-gay ideology' to me as the Health Complaints Commissioner (**the Commissioner**) for inquiry under section 103 of the Act. Section 103 of the Act enables the Commissioner to inquire into any health service matter referred by the Minister.

On 17 May 2018 I commenced an inquiry into conversion therapy/practices, commonly known as gay conversion therapy. For the purposes of my inquiry, we used the following definition of conversion therapy/practices:

*any practice or treatment that seeks to change, suppress or eliminate an individual's sexual orientation or gender identity, including efforts to reduce or eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.*

*'Conversion therapy/practices' does not include any practice or treatment that:*

- provides assistance to an individual undergoing a gender transition, or*
- provides acceptance, support and understanding of an individual, or*
- facilitates an individual's coping, social support and identity exploration and development, including sexual orientation-neutral interventions*

*as long as such practices or treatments do not seek to change an individual's sexual orientation or gender identity.*

Contemporary forms of conversion therapy/practices can include counselling, psychology or psychotherapy, formal behaviour-change programs, support groups, prayer-based approaches and exorcisms. Providers of conversion therapy/practices may include general health service providers or registered health practitioners, such as counsellors, psychotherapists, psychologists, psychiatrists, and social workers, and other providers, such as church ministries, church leaders, youth pastors, registered religious charities, prayer groups, and school chaplains.

The methodology for my inquiry included many structured individual and group interviews with victims of conversion therapy/practices and in some cases family members of victims. Interviews were also conducted with a number of support networks for survivors of conversion therapy/practices, whose membership comprised survivors. There are a number of counsellors whose expertise rests in assisting survivors of conversion therapy/practices and interviews with these counsellors provided valuable insights into the long-term damage caused by conversion therapy/practices. Counsellors interviewed were also able to share – confidentially – that the practice of conversion therapy was still widely prevalent, despite the large body of evidence discrediting such practices.

The methodology also included research into the approach to conversion therapy in other jurisdictions as well as position statements and codes of ethics of various professional bodies. In summary, there is widespread condemnation of any form of sexual orientation change effort among professional bodies, including the Royal Australian & New Zealand College of Psychiatrists, Victorian Branch; the Australian Psychological Society; the Australian Medical Association; the Psychotherapy and Counselling Federation of Australia; the Christian Counsellors Association of Australia; and the Australian Counselling Association.

Several overseas jurisdictions at that time had introduced legislation to ban the practice of conversion therapy, including Malta, Ireland and at least 14 States in the U.S.A. (with legislation pending in other States), and the nature of those legislative responses is set out in the report. I would be happy to provide a copy. Many have limited the bans to prohibiting conversion therapy of minors. However, Ireland has banned anyone from performing or offering to perform conversion therapy, regardless of the age of the person receiving the therapy or the position or qualification of the person offering the therapy.

My inquiry's findings detailed the long-term psychological harm and distress to people who have undergone conversion therapy/practices. Several key themes which were identified can be summarised under the following headings:

- Survivors experience acute distress and/or ongoing mental health issues and feelings of guilt and shame;
- Church teachings that homosexuality is sinful;
- Pressure to change a person's sexuality from gay to straight or pressure to stop acting on a person's same-sex attraction;
- Attributing 'same-sex attraction' to childhood, developmental or family issues.

Pursuant to section 103 of the Act, on completing the inquiry I made recommendations to the Minister for Health based on the findings of my inquiry, including a recommendation that the Minister consider introducing legislation to prohibit conversion therapy/practices.

You are no doubt aware that the Victorian government introduced the *Change or Suppression (Conversion) Practices Prohibition Bill 2020 (Vic)* into Parliament and it was passed by the Legislative Assembly in early December 2020. Once enacted, the Bill, which followed acceptance of the recommendations of my inquiry, will prohibit conversion therapy from being offered or provided to any person. It will legislate to:

- denounce and prohibit change or suppression practices;
- establish a civil response scheme within the Commission to promote understanding of the prohibition of change or suppression practices, consider and resolve reports of change or suppression practices, and investigate serious or systemic change or suppression practices;
- to prohibit engaging in change or suppression practices, including by creating offences in relation to engaging in change or suppression practices and other related activities;
- amend the definitions of *sexual orientation* and *gender identity* in the *Equal Opportunity Act*; and to include sex characteristics as a protected attribute under the EO Act.

It was very heartening to see the recommendations accepted and for legislation to ban these practices follow.

I am including several documents which informed my inquiry. Unfortunately, I am unable to provide a complete copy of my report as material within may result in those who came forward to us being identifiable to themselves and others.

I would be pleased to discuss my inquiry with you or a member of your team.



**Karen Cusack**  
Health Complaints Commissioner