

Sexual Orientation and Gender Identity Conversion Practices – Issues Paper No 31

Submission to the Tasmanian Law Reform Institute

3 February 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to respond to the Issues Paper *Sexual Orientation and Gender Identity Conversion Practices* issued by the Tasmania Law Reform Institute.

Question 1 - Definition

2. The ALA agrees with the definition of conversion practices adopted by the Victorian Health Complaints Commissioner in her 2018 Report on the Inquiry into Conversion Therapy. According to the Report, conversion practices include any practice or treatment that seeks to change, suppress or eliminate an individual's sexual orientation or gender identity, including efforts to eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions.

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

3. The ALA acknowledges that adults who are capable of providing free consent to conversion practices, and who freely choose to seek out informal faith-based activities within their faith communities, should be permitted to exercise their own agency to engage in these activities (which may include pastoral care or prayer activities).
4. However, the ALA submits that legislation should specifically protect the following groups from conversion practices:
 - a. Children; and
 - b. Any person who has a mental illness, cognitive impairment, or intellectual disability.
5. The ALA submits that protection for these groups recognises the vulnerability of children, those experiencing mental illness, and those with cognitive impairment or intellectual disability, and the inherent difficulties in gaining informed consent from such people before they are subjected to a practice that is known to be potentially harmful.

Question 4 - Do you think that Tasmanian law should be changed to address SOGI conversion practices?

6. The ALA submits that Tasmanian law should be changed to provide that any conduct by registered health practitioners aimed at 'changing', 'suppressing', 'curing', 'healing' or 'repairing' a person's sexual orientation or gender identity should be specifically prohibited.
7. The ALA submits that this prohibition should also extend to other professionals, including social workers (unregistered and registered), health practitioners and teachers.
8. The ALA submits that the prohibition of such conduct should extend to any person where this conduct targets children or young people, or people with mental illness, cognitive impairment or intellectual disability.

Question 5 - Should some or all forms of SOGI conversion practices be criminalised in Tasmania?

9. The ALA submits that conversion practices should be regulated by a combination of criminal law and civil law.
10. The ALA submits that a criminal offence should be created to prevent parents or others from removing a person from Australia for the purposes of conversion therapy involving forced or coerced therapies or situations where there is a risk of physical harm.

Question 6 - Should some or all forms of SOGI conversion practices be made civil wrongs in Tasmania?

11. Apart from the specific situation referred to above, the ALA submits that civil penalties are more appropriate and proportionate mechanisms to respond to the harm presented by conversion therapy. The ALA submits that the burden of proof in criminal provisions would be difficult to meet in most cases.
12. The ALA strongly submits that survivors of conversion therapy should be able to issue civil proceedings to recover damages from providers of conversion therapy services to compensate for any pain and suffering or psychological harm that is attributable to the practices.

Conclusion

13. The Australian Lawyers Alliance (ALA) welcomes the opportunity to respond to the Issues Paper *Sexual Orientation and Gender Identity Conversion Practices* issued by the Tasmania Law Reform Institute. The ALA would be available to provide further input into the Institute's consideration of this important issue.

A handwritten signature in blue ink, appearing to be 'S Buscemi', with a large, sweeping flourish underneath.

Sebastian Buscemi

Tasmanian President and State Director

Australian Lawyers Alliance