AMA
TASMANIA
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28th January 2021

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RE: Consultation on the Sexual Orientation and Gender Identity Conversion Practices – Issues paper 31

Thank you for the opportunity to comment on the Issues Paper relating to Sexual Orientation and Gender Identity Conversion Practices.

AMA Tasmania is the state's peak medical advocacy group representing doctors across all disciplines and throughout all levels of the health system.

The AMA nationally has long held the view that the use of "reparative" or "conversion" therapy that is based upon the assumption that homosexuality is a mental disorder and that the patient should change his or her sexual orientation is wrong. In more recent times, a growing number of jurisdictions have been legislating to ban conversion therapies relating to sexual orientation and gender identity.

AMA Tasmania has consulted with our membership on the TLRI Issues Paper. There was a strong view that Sexual Orientation and Gender Identity (SOGI) conversion practices are harmful and should be banned. However, there was also some concern as where the line is drawn on what constitutes conversion practices, when seeing a person with dysphoria. Some of these complexities were discussed in the AMA Queensland submission on the *Health Legislation Amendment Bill 2019 (the Bill)* dated 31 January 2020 (see attachment).

Definition of SOGI Conversion therapy

There was largely agreement from our members with the definition as proposed by the TLRI, but like any definition, it will be how the words within it are interpreted and thus the line drawn on what constitutes conversion therapy and how the intent that sits behind an act or statement can be proved, that will be important.

Role of the Clinician

The strong theme to emerge from our consultation was that this must be viewed as a clinical and health issue and that there must be a safe space for doctors together with their patient to be able to explore issues relating to the patient's sexual orientation or gender identity.

> "It needs to be acknowledged that there is a role for clinicians to spend time with (especially) young people who express a gender preference other than their natal gender to assist them to explore this - not in any attempt to dissuade them from expressing their preference but to assist them in working through any decision regarding a gender transition. Sections 213F(2) and 213F(3) of the Public Health Act QLD do address this. In 213F(3)(e) mention is made of a person's development - this is actually very important- it is recognised that in adolescence individuals may question their gender identity - and this is seen for many as a 'normal' developmental experience - for many they work through this and determine they are comfortable with their natal gender - some go on to a desire to undergo gender transition. Unfortunately, some groups assert that any exploration of such feelings is inappropriate and would consider this a part of SOGI conversion practice. It is important that such exploration by a clinician is allowed and seen as clinically appropriate – see 213F(2)(a)"

Some concern was also raised that the Victorian legislation, currently before the Parliament, goes too far, the perception being that it forbids anyone from ever saying anything other than agreeing with the person's statement on their gender identity.

> "Ultimately the goal is to ensure that they are sure, given the permanent nature of gender reassignment and the potential for significant harm, but questioning is sometimes necessary in the course of getting to that point."

We are aware of concerns within the Psychiatric community in Victoria that their legislation may constrain the legitimate practice of psychiatry/psychotherapy in treating patients experiencing gender dysphoria and as a result, psychiatrists might decline to provide such services in future.

Consent to SOGI Conversion Therapy

If we agree that SOGI conversion practices are harmful and the proposal is to ban them, then people should not be allowed to consent to such practices.

Should it be a criminal offence?

While supporting the banning of such practices, AMA Tasmania members want to ensure that doctors are not left open to criminal prosecution for asking what they consider to be necessary questions to understand their patients' needs and desires.

Healthcare professionals acting in good faith and in accordance with reasonable standards of diagnostic assessment, clinical counselling and patient management must never be exposed to criminal sanction for competently doing their job. Members would prefer that where there is an issue with a health professional, that that be referred to the Australian Health Practitioners Registration Authority (AHPRA) for further investigation and sanction.

However, if the decision was to make it illegal under the law for all registered or non-registered persons to provide SOGI conversion therapy, then doctors would prefer for it to be treated as a summary offence rather than a criminal offence. Proving intent sufficient to satisfy the elements of

a crime would be harder to achieve and a summary offence would strongly discourage any doctor from using such practices, while also ensuring that sanctions, such as fines or placing restrictions on a person's practice, could be placed on any person who crossed the line into conversion therapy.

Other issues

It is important to note that in the AMA QLD submission, comments are at times referring to more than the practice of conversion therapy. For example, Prof. Morris comments on the use of hormonal and surgical interventions to transition to the preferred gender. This is a different, but very important issue. It is critical that the two should not be conflated. When and how hormonal and surgical therapies should be made available is still a very controversial issue with opposing opinions strongly expressed. The proposal to bring together the various medical Colleges, AMA, NHMRC and so on to develop practice guidelines for assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria is timely and extremely important- but is a different (albeit related) issue than what should be done regarding SOGI conversion practices.

In summary, AMA Tasmania supports a ban on Sexual Orientation and Gender Identity Conversion Practices, but it must not come at the cost of good patient care.

Thank you once again for the opportunity to consult with doctors on this important issue.

Yours sincerely

Dr Helen McArdle
President AMA Tasmania

Attached: Submission from AMA Queensland
https://qld.ama.com.au/sites/qld/files/QLD/PDFs/Policy/AMAQ_Conversion-Therapy_January2020.pdf

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31 January 2020

Mr Aaron Harper
Chair
Health, Communities, Disability Services and
Domestic and Family Protection
Via email: ***health@parliament.qld.gov.au***

Dear Mr Harper

Thank you for providing AMA Queensland with the opportunity to provide feedback on the new *Health Legislation Amendment Bill 2019* (the Bill).

AMA Queensland is the state's peak medical advocacy group, representing over 9600 medical practitioners across Queensland and throughout all levels of the health system.

AMA Queensland acknowledges the harm that the practice of conversion therapy has on LGBTIQ people. AMA Queensland supports the ban on conversion therapy. AMA Queensland also supports the inclusion of all unregulated practitioners involved in conversion therapy.

AMA Queensland provides comments about two sections of the *Health Legislation Amendment Bill 2019* (the Bill):

i. Amendment of the *Public Health Act 2005* – specifically, Chapter 5B (213E; definitions/213F; meaning of conversion therapy and 213H; Prohibition of conversion therapy. The issue of gender dysphoria is important for AMA Queensland as a number of our members currently work in this specialised area and have experience assisting children and adolescents who present with gender dysphoria, and

ii. Amendment of *the Hospitals and Health Boards Act 2011* - Last year, AMA Queensland provided feedback about the governance structure of Queensland's public health system around industrial relations and the need for consistency across various policy areas and implementation of the same. AMA Queensland is keen to be fully briefed on the practical effect of the proposed changes.

Amendment of the Public Health Act 2005 – specifically, Chapter 5B (213E; definitions/213F; meaning of conversion therapy; 213H **Prohibition of conversion therapy*)***

AMA Queensland is opposed to the amendments recommended in the *Health Legislation Amendment Bill 2019*, on the basis that the legislation could lead to the prosecution of health professionals providing evidence based practices and have the potential to limit therapeutic approaches supporting children and adolescents presenting with gender dysphoria. Our main concerns are:

i. The legislation could lead to the prosecution of health professionals providing evidence based practices.

ii. Potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria

iii. Definitions in sections 213E and 213F

i. The legislation could lead to the prosecution of health professionals providing evidence-based practices.

AMA Queensland is concerned that the wording of the legislation could lead to the prosecution of health professionals providing evidence based practices. As one of our members, Dr Cary Breakey wrote in his submission (submission 107):

"the legislation effectively puts any psychotherapy and family therapy practitioners are at risk of offending if not "affirming" the child's (or even adults) gender preference. Even Gender Clinics who do comprehensive evaluations of family and dynamic drivers of the child's gender feelings could be vulnerable, especially if they identify powerful parental dynamics heavily influencing the child's expression."

This view is supported by another AMA Queensland member, Dr Peter Parry, who wrote in his submission (submission 117):

"Gender dysphoria varies with circumstances in any particular individual and some cases persist, whilst many desist and become more comfortable with birth gender or a same-sex orientation. In my view, the bill as it currently is written, does not provide sufficient protection for therapists to assist young people – in the area of gender dysphoria – to explore possible family, psychological or social dynamic causes of their gender dysphoria."

AMA Queensland strongly supports the view of Dr Philip Morris (President of the National Association of Practicing Psychiatrists, NAPP) and a member of AMA Queensland, when he writes, (submission 1):

"Questions arise about the capacity of the child to make decisions related to medical interventions (hormonal and surgical) necessary to transition to the preferred gender. These interventions have long-term consequences and are often permanent. Some will have adverse effects on the health of the individual. At what age and at what level of cognitive sophistication does a child have the competence to make these decisions?"

And:

"medical interventions used to transition children to the preferred gender are now shown to be not without harm".

AMA Queensland would suggest all medical colleges who have member doctors involved in treating gender dysphoric children (paediatricians, general practitioners, surgeons, endocrinologists, gynaecologists, psychiatrists), the National Health and Medical Research Council, the Medical Board of Australia, along with the Australian Medical Association, the NAPP and other representative medical bodies, to form a joint committee to develop a set of practice guidelines for the assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria.

AMA Queensland believes these guidelines, which would set the necessary practice guidelines for the assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria for all health practitioners, would eliminate any non-therapeutic practices which are occurring in this field overnight.

213H Prohibition of conversion therapy and 213I Proceedings for indictable offence

When the Queensland Abortion Law was passed by the Queensland Parliament, it moved abortion from the criminal code to the health code, so if a woman presents with an unplanned pregnancy, if there is inappropriate behaviour by a health professional, they are referred to the regulators (OHO) or Medical Board of Australia and not the police.

However, members believe this legislation is doing the reverse; moving the evidence based therapeutic approaches of gender dysphoria from the health code to the criminal code. AMA Queensland believes there are insufficient grounds nor evidence for offences contained within the Bill to be prosecuted under the Criminal Code. Some members of AMA Queensland believe these offences should be managed by AHPRA and other health regulators such as the Health Ombudsman.

AMA Queensland membership proposes that the recommendation by Queensland Law Society be considered (submission 137):

> *"Where outdated and harmful therapeutic practices are used in medicine, these are almost always dealt with by way of health practitioner regulation and not by criminal offences. We consider that the practice of conversion therapy is already capable of being targeted by the relevant health regulators and referred to the Health Ombudsman."*

ii. ***Potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria***

Our members are concerned that there is potential for the legislation to limit therapeutic approaches supporting children and adolescents who present with gender dysphoria. The

Bill suggests that the evidence for conversion therapy occurring is clear and settled but this is far from the truth.

Queensland Health Director General, Dr John Wakefield, concedes that the evidence is scant. The Queensland Government is basing their entire case on a single publication from Latrobe University[1] with 15 people involved, of which only 2 had gender dysphoria, one of whom was not treated with conversion therapies.

Section 3.4.1 from this publication confirms:

"There are no studies on conversion practices in contemporary Australia".

Section 7.2.1 from this publication confirms:

"It is highly unlikely that health professionals in Australia practice conversion therapies."

In the recommendations section of the publication from La Trobe, under the section entitled "Appropriate sanctions and penalties":

The recommendations do not request that conversion practices be criminal offences. The recommendations suggest that regulatory bodies enforce the provisions

The other area of concern to AMA Queensland is that in the Queensland Parliament Committee meeting with Queensland Health on 9 December 2019, QH Director General says that conversion therapies are defined by the **intent** of the practitioner. However, the legislation defines conversion therapies as:

"Conversion therapy is a treatment or other practice that attempts to change or suppress a person's orientation or gender identity"

AMA Queensland would suggest that more research is needed across all the domains of care for children and adolescents who present with gender dysphoria, and while the evidence is limited, there are significant publications that need to be brought to the attention of the government. For instance, the August 2018 edition of the Medical Journal of Australia (MJA 2018) features an article by Michelle M Telfer et al [2] called, *Australian standards of care and treatment guidelines for transgender and gender diverse children and adolescents.* The authors state:

> *"There is growing evidence to suggest that for children, family support is associated with better mental health outcomes. [3] Where there is a lack of family understanding or support for a child's gender diverse expression, a clinician may work with family members to help develop a common understanding of the child's experience.*

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[1] La Trobe University (2018) Preventing Harm, Promoting Justice LaTrobe University 10/18
[2] Michelle Telfer, Michelle Tollit, Carmen Pace, Ken Pang *Australian standards of care and treatment guidelines for transgender and gender diverse children and adolescents – position statement summary* Med J Aust 2018; 209 (3): ||
[3] Olson K, Durwood L, DeMeules M, McLaughlin K. Mental health of transgender children who are supported in their identities. Pediatrics 2016; 137:e20153223.

When a child's medical, psychological and/or social circumstances are complicated by coexisting autism spectrum disorder, mental health problems, learning or behavioural difficulties, trauma, abuse or significantly impaired family functioning, a more intensive approach with input from a skilled mental health clinician with expertise in child cognitive and emotional development and child psychopathology, and experience in working with children with gender diversity and gender dysphoria, is required.

Increasing evidence demonstrates, that with supportive, gender affirming care during childhood and adolescence, harms can be ameliorated and mental health and wellbeing outcomes can be significantly improved". [4]

iii. Definitions section 213E and 213F

Our members find the definitions in section 213F ambiguous and are concerned that the wording of the legislation is not clear and our concerns are that doctors working in this area (Psychologists, Endocrinologists, Paediatricians, Surgeons and General Practitioners) may inadvertently fall foul of the legislation. Should the committee proceed to recommend with Chapter 5B of the proposed Bill, AMA Queensland strongly recommends changes to ensure any legislation provides clarity and certainty for our members.

In this circumstance, similar to the NAPP position, AMA Queensland is recommending an amendment to 213F (1), the definition of conversion therapy to read:

Conversion therapy is a treatment ***for which the only intent*** *is to attempt to change or suppress a person's sexual orientation or gender identity*

In addition, we are recommending the addition of the following examples in 213F (2):

- *Treatments and practices that provide empathetic acknowledgement and evidence based support and understanding for the facilitation of an individual's coping, social support and identity exploration and development;*

- *Treatment of any identified psychiatric comorbidity.*

Even the Health Ombudsman, an appointment made by the Health Minister, is confused and is requesting change, indicated in his submission to the Inquiry (submission 135) i. AMA Queensland agrees with the Health Ombudsman who suggested incorporating more detail from the explanatory notes into clause 213F (3):

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[4] de Vries A, McGuire J, Steensma T, et al. Young adult psychological outcome after puberty suppression and gender reassignment. Paediatrics 2014; 134: 696-704; Simons L, Schrager S, Clark L, et al. Parental support and mental health among transgender adolescents' Adolesc Health 2013; 53: 791-793; Olson K, Durwood L, DeMeules M, McLaughlin K. Mental health of transgender children who are supported in their identities. Pediatrics 2016; 137:e20153223.

[5] Littman, L. Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports. PLoS ONE 2018; 13(8): e0202330. https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330

"The exclusion will protect practitioners who, acting reasonably, in good faith and in accordance with relevant professional standards, treat a patient in a manner that could be subjectively perceived as not affirming or supporting their sexual orientation or gender identity. For example, a doctor may advise against surgery because a patient has a pre-existing condition that means the surgery is not safe.

A doctor may also be required to advise a patient about potential side effects of drugs. In cases such as these, health service providers will be able to rely on the reasonable professional judgment exception to ensure that the health services provided are delivered in a safe and clinically appropriate manner."

Summary of AMA Queensland's recommended changes to the proposed amendments:

1. an amendment to 213F (1), the definition of conversion therapy to read (amendment underlined):

   Conversion therapy is a treatment <u>for which the only intent</u> is to attempt to change or suppress a person's sexual orientation or gender identity

2. Add the following examples in 213F (2):

   - Treatments and practices that provide empathetic acknowledgement, evidence based support and understanding for the facilitation of an individual's coping, social support, identity exploration and development;
   - Treatment of any identified psychiatric comorbidity.

3. Amend sections 213 H and 213 I to remove the indictable nature of the offences.

Finally, AMA Queensland is requesting a briefing from Queensland Health on the practical implications of the Amendment of the Hospitals and Health Boards Act 2011, especially the IR and HR amendments.

If you require further information or assistance in this matter, please contact Mr Jeff Allen, AMA Queensland Policy Manager on 3872 2262.

Yours sincerely

Dr Dilip Dhupelia
President
AMA Queensland