THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

School of Law

The Tasmanian Law Reform Institute
University of Tasmania

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Dear colleagues,

Re Conversion Therapy Issues Paper

I am writing in response to this Issues Paper, which I note has been issued with a short response time over the December/January holiday period. I have taken an interest in gender identity issues mainly from a child protection perspective, and this is my primary focus in writing to you.

From a legal perspective, gender incongruence (which is the latest term in the medical literature) raises some different issues to those concerning sexual orientation; but these are conflated in the Issues Paper.

The problem of gender incongruence

There have been significant changes in recent years both in the number of young people seeking to transition, and in the sex ratio of those seeking this assistance. Gender identity disorder, as it was once known, was mainly experienced by natal males. In version 5 of the *DSM,* published by the American Psychiatric Association in 2013, rates of gender dysphoria for natal adult males are estimated at 0.005% to 0.014% of the population, and for natal females, from 0.002% to 0.003% (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5*, (5th ed, 2013) p. 454).

While identifying as transgender was once quite rare, it is so no longer. Teenagers in particular are now identifying as 'trans' in numbers comparable to, or even exceeding, the percentage who identify as same-sex attracted: see eg Laura Baams, 'Disparities for LGBTQ and Gender Nonconforming Adolescents' (2018) 141(5) *Pediatrics* e20173004 (survey of nearly 82,000 students in Minnesota).

In many parts of the world, including Australia, the number of people presenting at specialist clinics with gender identity concerns has increased exponentially over a short period of time. Now it is mostly girls who are going to gender clinics, a great many of whom have autism diagnoses and a range of mental health issues that cannot be explained by minority stress.

There are huge and important debates about these issues in the medical and scientific literature, with mounting evidence that the rise in transgender identification amongst

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troubled teenage girls is being fuelled by social media and YouTube celebrities. The High Court in London, with a bench comprised of three senior judges, has recently delivered a major decision in the Keira Bell case, endorsing many of the medical and scientific concerns about the current approach to treatment of young people in these very difficult cases.

These issues are also highly politicised, which is unfortunate. The health and wellbeing of children and young people ought to be a matter above politics. Those who argue we should 'trust the science' in relation to such issues as climate change or the response to the pandemic ought also to respect the science – and the importance of debating the issues through the academic and professional literature – when it comes to issues concerning gender identity.

The chilling effect of ill-considered laws

The serious risk is that as a result of ill-considered laws based upon political advocacy, many very troubled young people will be deprived of the help and care they need from mental health professionals, and will embark upon irreversible medical transitions that they later deeply regret. This risk arises because such laws have a chilling effect, driving professionals away from offering services that *might* be prohibited, however carefully drafted the laws may be.

With this in mind, I have to express the most serious concerns about the objectivity and rigour of the Issues Paper you have recently put out. Even if a reference arises from a community group, a law reform body must engage in a dispassionate examination of the issues, looking at all sides of the questions in an open-ended way. This Issues Paper falls far short of that standard. It reads as an advocacy paper, citing evidence selectively and arguing why any evidence to the contrary should be discounted. Its major points and conclusions read as if they have been dictated to the TLRI by political activists wanting a particular outcome. The arguments presented lead the reader inexorably to the conclusion that legislation of the kind passed in Queensland, the ACT and elsewhere should be adopted in Tasmania, and that the task of the TLRI is mainly to make recommendations concerning the form it should take.

'SOGI conversion practices'

A fundamental flaw of the entire paper is that it refers generically to "SOGI" practices. The claim that there is some connection between long-discontinued and unethical practices such as aversion therapy that attempts to change sexual orientation, and treatment programs responding to those with gender identity concerns, is an erroneous one. The evidence cited about the harms of conversion practices on pp.18ff is almost entirely drawn from studies concerning therapeutic programs to change sexual orientation

(see footnotes 53-57). The exception to this is the Canadian study by Salway et al; but in this study, only 12 people who identified as being transgender reported experiencing a 'conversion therapy' practice. This is far too small a number to be making any claims about the direction of public policy. Such small cell sizes have little or no statistical power. In any event the data is reported in that paper without much differentiation between the sexual minorities. The authors properly note the limitations of their study.

Apart from Salway et al, there are no citations to support the claim that so-called 'gender identity conversion practices' are harmful, and nor are there likely to be; for the overwhelming evidence is that for children at least, serious discordance between natal sex and gender identity tends to be resolved by puberty if a cautious therapeutic approach is adopted, with most of those children growing into adults with a same-sex orientation. See M. Wallien, & P. Cohen-Kettenis, 'Psychosexual Outcome of Gender-dysphoric Children' (2008) 47 *Journal of the American Academy of Child and Adolescent Psychiatry* 1413; J. Ristori and T. Steensma, 'Gender Dysphoria in Childhood' (2016) 28 *International Review of Psychiatry* 17. These consistent clinical findings are contested on theoretical grounds (see Julia Temple Newhook and others, 'A Critical Commentary on Follow-Up Studies and "Desistance" Theories About Transgender and Gender-Nonconforming Children' (2018) 19 *International Journal of Transgenderism* 212; see also the responses from Kenneth Zucker, Thomas Steensma & Peggy Cohen-Kettenis in the same issue). However, no clinical studies have been conducted that contradict these findings.

Furthermore, there is strong evidence of the value and importance of therapeutic counselling for adolescents who come to gender clinics identifying as transgender. Anna Churcher Clarke and Anastassis Spiliadis, of the Tavistock Gender Identity Development Service in London reported recently on twelve gender dysphoric adolescents who initially sought medical transition but who decided against hormone treatment after counselling (in ''Taking the Lid Off the Box': The Value of Extended Clinical Assessment for Adolescents Presenting with Gender Identity Difficulties' (2019) 24(2) *Clinical Child Psychology and Psychiatry* 338). All these therapies are at risk of criminalisation if the advocacy groups get their way.

The claim that there is such a thing as 'SOGI conversion practices' relies on an assumption that because LGBTQIA + advocacy groups bring together in a common cause the very different experiences and histories of those who are, or who identify as, gay, lesbian, bisexual, transgender, intersex, non-binary, agender, or queer, so any research on gay and lesbian population groups is automatically applicable to all those others who are in the same socio-political movement. There is no evidence to justify such a claim. It is not supported by the quotes from peak bodies cited on p.20 which refer to same-sex orientation only.

Evidence of a significant social problem

It requires strong evidence of a serious problem before new criminal laws are enacted. The TLRI quotes an advocacy group for the proposition that "up to 10 per cent of Australians may be exposed to some form of SOGI conversion practices". With great respect, this is a ludicrous claim. The subsequent claims made by the TLRI about Tasmanian churches engaging in so-called conversion practices, without any evidence to support them, to my reading display animus against people of faith. This bias, in a publicly-funded quasi-governmental organisation, is disturbing.

There is much more I could say about the lack of objectivity and rigour in this Issues Paper. My view is that any conclusions reached by the TLRI on this topic will be irredeemably affected by the problem of viewpoint bias in the questions asked and the commentary on the issues provided.

I am not sure how the project can be salvaged from here. I urge you, at the very least, to give serious attention to the matters I have raised and the science on which my concerns are based. I am happy to discuss the issues with your leadership.

Yours sincerely

Professor Patrick Parkinson AM