

a Submission to the TLRI consultation on SOGI Conversion Practices

from Eric Lockett

Background

I am lodging this private submission in the hope that it will bring some common-sense to a topic in which it is all too often sadly lacking.

I began preparing the submission in good faith, naturally assuming that if the TLRI was looking into this issue then there must be some demonstrable need for relevant legislation. It was only when I reached page 21 of the over 70-page Issues Paper, where only half a page is devoted to the nature and prevalence of the practices concerned in Tasmania, that I discovered that the TLRI had no evidence whatsoever that any harm had been caused or is likely to be caused by them in Tasmania.

This looks disturbingly like a solution searching for a problem and is surely diametrically opposed to the TLRI's stated objectives to simplify the law and repeal laws that are unnecessary. Unless some substantial justification can be found, surely the appropriate response for the TLRI would be to terminate this investigation as vexatious and to recommend against any legislation so as to avoid any further waste of its time and taxpayers' money. It must not be seen as lending itself to providing ammunition for minority sectional interest-groups to unjustly demonise anyone who disagrees with them.

Nevertheless, I am submitting the following draft that I had begun before reaching the above conclusion and terminating my study of the Issues Paper.

Introduction

First, we must be clear about the distinction between sex and gender. Apart from a few people with extremely rare genetic abnormalities, all human beings have a clearly distinguishable, genetically determined biological sex. This is evidenced not only by their overall physical attributes or even their particular organs but right down to the level of their millions of individual cells, which tend to behave differently (e. g. in their drug reactions) between the sexes. These facts cannot be negated by medical or legislative interventions.

On the other hand, humans also have an attribute which has become known as gender. This term was originally a grammatical one relating only to words, but since the 20th century has been more widely applied to human beings to denote their psychological sexual orientation. Essentially, sex is about biological facts, whereas gender is about psychological perceptions, which in turn affect behaviour. In the vast majority of cases this distinction is unimportant because a person's gender normally corresponds to their biological sex. Nevertheless, it is important that the law recognises the distinction, particularly as it relates to people experiencing a conflict between their biological sex and their gender orientation.

Definition of SOGI conversion practices.

We must be careful here to avoid the truly Orwellian trap of excluding practices which seek to entrench by various methods, even including bodily mutilation, a psychological perception of gender which is at variance with a person's biological sex (i. e. "transitioning") from the definition of "conversion" while classifying attempts to persuade people to be reconciled in their social lives to the sex with which they were born as "conversion".

The underlying assumption behind calls for legislation on "conversion practices" from quarters such as those that instigated this review seems to be that "transitioning" should be tolerated, or even encouraged, whereas "conversion" should be prohibited. Yet, arguably, this is likely to do much more harm than good. There may indeed be a stronger case to be made to prohibit some of the more extreme attempts to entrench gender identities at variance with biological sex. There is abundant evidence from those who have had their lives (and their bodies) permanently scarred by such experiences to support such a case.

If there is to be legislation in this area, although I am not one to encourage the proliferation of legislation, ideally it should be even-handed enough to prohibit abhorrent practices that aim to "change or suppress a person's sexual orientation or gender identity" away from as well as towards their biological sex. This would require a definition capable of being applied in either direction. While such a recommendation is perhaps beyond the TLRI's current brief, I believe it is an important point that needs to be made.

There also seems to be an assumption behind the Issues Paper that the current flood of girls wanting to be boys cannot possibly be socially motivated or a consequence of psychological dysfunction and therefore any honest attempt to rectify this problem in the interests of the individuals concerned (e. g. through psychological counselling) must be outlawed.

I believe the statement in para. 1.2.6.(p3) of the Issues Paper would have been more accurate had it said that: "SOGI conversion practice acts and statements are commonly **purported by their opponents to be**". In particular, the statement under point 5 about causes and changeability of sexual orientation or gender identity not being supported by mainstream scientific, health and medical experts is highly challengeable. Many experts have supported this. And how else can we explain the current flood of girls wanting to be boys? No attempt has been made to explain it in any other terms.

As for "false claims" who is to judge what is true and what is false? I do not believe it is the role of government to enforce anyone's views in this matter. Except in cases of actual abuse, it is the parents' role to educate their children in the way they want them to live until they are of an age to make their own informed judgments.

In short, if we really need legislation in this area (which is itself questionable as we surely already have laws against non-consensual, physically abusive acts) then we should define prohibited practices in terms that take in only those acts that are genuinely harmful and that can be applied equally to measures intended to move one's gender identity away from or towards one's biological sex. The law should not lend itself to ideological battles.

Intersection with religious freedom and freedom of conscience and expression

It is with some relief that I observe that: “The TLRI notes that holding or expressing religious, ethical or personal views about LGBTQA+ people is not generally considered to be necessarily a form of SOGI conversion practice” (para. 1.2.9, p5). To hold otherwise would indeed be drawing a long bow and the explanatory note quoted from the ACT’s Sexuality and Gender Identity Conversion Practices Act 2020 (p5) is commendable.

The Sexual Orientation and Gender Identity Change Efforts Survivors’ (SOGICE Survivors) *SOGICE Survivor Statement* expresses a view of “LGBTQA+ conversion practices” that is itself ideologically based, so I will avoid the temptation to be drawn into an argument between competing ideologies or scriptural interpretations. Suffice it to say that all people should be free to believe what they wish and to express their views unless those views have been demonstrated to cause real harm to others. The bar for causing real harm needs to be set high because freedom of conscience and expression is so fundamental to maintaining a civilised society.

Given how much all Western societies owe to the Christian religion, the High Court’s observation that: “religious belief and practice cannot be absolutely separated either from politics or from ethics” (p7) is hardly surprising and accords with plain common-sense. I don’t believe that the law should presume to generally insert itself into religious, political or ideological arguments.

Meaning of SOGI conversion practices

While I have no objections to the paper’s use of the term “Sexual Orientation and Gender Identity conversion practices” as far as it goes, it is, as I indicated earlier, important to recognise that some of the practices associated with so-called “transitioning” (i.e. moving away from one’s biological sex to mimic the opposite sex) are potentially much more harmful and in greater need of prohibition. It would be a non-sequitur to conclude that “conversion” is inherently bad but “transitioning” is inherently good.

The provisions cited from section 213F of the Public Health Act 2005 (Qld) (p10) contain some important safeguards, but are very much subject to the interpretation of what constitutes “assisting”. Could helping someone to come to terms with their biological sex, for example, be seen as “assisting a person who is considering undergoing a gender transition”? Similar questions apply to other parts of this section, e. g. section 213F(3)(e). Much the same issues arise with the ACT legislation.

Of the other jurisdictions cited, the specific exclusion of “surgical/medical interventions or hormone treatments aimed at expressing a person’s self-perceived gender identity” from the German legislation (p11) seems a particularly retrograde move, given the growing evidence of serious harm from such treatments. Canada’s proposed bill (p12) is perhaps the most specific and therefore the most ideological and out-of-touch in that its prohibitions explicitly relate only to attempts to move one’s sexual orientation towards one’s biological sex.

In general, I believe that a principles-based approach is best (p12), as legislation that is too prescriptive would lend itself to oversights, conflicts and legal arguments. But the principles involved must be sound and widely accepted among the broader community.

I have some reservations about the working definition proposed in the Issues Paper (p13). It seems to imply that all claims that “non-conforming sexual orientation or gender identity is a physical or psychological dysfunction” are false. This accords with LGBTQA+ ideology but, as a scientist myself, I don’t believe that it is scientifically defensible. The jury is still out on whether there are physical causes for homosexuality, although after decades of searching no-one has been able to discover a “gay gene”. Furthermore, I believe there is very strong evidence that the current spate of girls wanting to transition to boys is largely socially and psychologically instigated. It therefore seems reasonable to regard it as a dysfunction.

While the proposed definition does not directly refer to the ideology behind the actions concerned, it does rely on assumptions based on an opposing ideology. I therefore believe that section (c) would be best omitted altogether, leaving the definition to rely solely on facts. It is then important that any associated prohibitions include sufficient qualifications to allow for legitimate and non-harmful activities.

Effects of SOGI conversion practices

The Issues Paper rightly acknowledges “the difficulty of assessing the harm **or benefits** (my emphasis) of SOGI conversion practices” (p16). While I appreciate this difficulty, and fully endorse patient-centred care, I am personally sceptical of the reliability of self-reported data, especially when the subjects may believe that they have an interest in manipulating the findings, which would usually be the case in this sort of study.

Given the enormous number of variables (e. g. the nature of the practices employed and the nature and circumstances of the subjects) and the other difficulties involved, it is hardly surprising that the American Psychological Association found that: “recent empirical literature provides little basis for concluding whether SOCE has any effect on sexual orientation” (p17). However, the TLRI seems to have had no trouble detecting only harmful effects from attempts at “conversion”. Some scepticism seems justified.

Anecdotal accounts on either side do not constitute hard evidence that can be more widely generalised. I strongly suspect that there are individual cases of both harm and benefit, but it is hard to generalise from them what sort of practices will be of benefit or harm to which people under what circumstances. The Issues Paper’s criticism of some of the pro-conversion literature could equally well be levelled at much of the anti-conversion literature.

The elephant in the room for bodies such as the APS which oppose attempts to change a person’s sexual orientation (p20) is that, taken at face value, this description includes attempts to steer them away from their biological sex. The issue is further confused when LGBTQA+ lobbyists alternatively claim that sexual orientation is intrinsic and unchangeable or that gender should be a matter of free choice and changeable, as suits the occasion.

Nature and prevalence in Tasmania

This is the crux issue for Tasmania. Is there a demonstrable need for such legislation? If not, then surely there are more pressing issues to be dealt with. Yet, astonishingly, this section takes up only half a page in an over 70-page document and presents absolutely no evidence that a problem exists or is ever likely to exist in Tasmania. To assert, as the Issues Paper does, that SOGI conversion practices “may be taking place in Tasmania” is not good enough. And to base that assertion on overseas data combined with an estimate of the number of Australians who are extremely or very active in their churches is an unjustified and reprehensible slight on Tasmanian churches.

It seems that this whole exercise is aimed at addressing a non-existent problem. Question 3 (p23) looks very much like a trawl for some justification. I’m sure that there are those who will be willing to oblige, but whether they can provide a valid case for legislation seems, at best, doubtful. Otherwise, this will look very much like a time-wasting attempt to appease a vocal minority. Surely the TLRI has better things to do.

Conclusion

I recognise that somewhere some people may have been adversely affected by ill-advised measures aimed at “converting” their sexual orientation to match their biological sex, while others may have benefited from different measures with the same aim. On the other hand, many have undoubtedly been seriously harmed by measures to “transition” people towards the opposite sex, which include hormonal, surgical and psychological interventions that have been proven to create all manner of distress for the participants later in life. Although, thankfully, this isn’t currently happening in Tasmania, it could be happening to Tasmanians. This would be a subject much more worthy of investigation by the TLRI.

I began this submission in good faith, intending to carefully work through the Issues Paper’s material. However, I feel so disillusioned at this point that I don’t propose to waste any more time on it. I have quickly skimmed through the remainder and my only further comment is that it seems we already have perfectly adequate legislation to deal with conversion practices likely to cause real harm, as distinct from those causing offence to people who choose to use that offence as a weapon against others with whom they disagree.

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